REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Sections 85 & 88 NIRC		#134-2016

Person to Contact: Chief, Law Division
Tel Nos. 926-5536/927-09-63

Date: April 18, 2016

LAURON DELOS REYES & PARTNERS
Unit 1001 10th Floor Union Square Condominium
No. 145 15th Avenue, Cubao Quezon City

Attention: ATTY. RHODA S. MANUEL

Gentlemen:

This refers to your letter dated November 7, 2011 stating that during the lifetime of Agueda A. Garcia she was entrusted with the money of your client, Rodolfo B. Ambion, her brother, who is living in the United States of America; that upon instruction of Rodolfo B. Ambion, Agueda A. Garcia opened two (2) accounts at the Philippine National Bank (PNB), Tagaytay Branch, for her brother, to wit:

a) Account Name: Agueda A. Garcia ITF Rodolfo B. Ambion, with Account No. ; and
b) Account Name: Agueda A. Garcia ITF Rodolfo B. Ambion, with Account No.

that considering that the money is owned by Rodolfo B. Ambion, the two (2) accounts were denominated as "ITF," meaning, "in trust for," reflecting that the true legitimate owner thereof is Rodolfo and not Agueda; that with respect to the first bank account with Account Name Agueda A. Garcia ITF Rodolfo B. Ambion under Account No. , the same was closed without difficulty upon the request of Rodolfo B. Ambion with the PNB Tagaytay Branch through the effort of Agueda's husband Ireneo Garcia and amount deposited thereon was correctly transferred to Rodolfo B. Ambion's account at the PNB; that, however, as regards the second bank account with Account Name Agueda A. Garcia ITF Rodolfo B. Ambion under Account No. the same has not been transferred yet to Rodolfo's account despite diligent effort; that upon its maturity, the Account Name Agueda A. Garcia ITF Rodolfo B. Ambion with Account No. was wrongfully renewed to Account Name Agueda Ambion Garcia with Account No. ; that in view of non-transfer, on February 11, 2010 you personally went to PNB Tagaytay Branch to file the Letter-Request for the closing of the bank account with Account Name Agueda A. Garcia ITF Rodolfo B. Ambion with Account No. (now Account Name Agueda

040524

Ambion Garcia under Account No.) and for transferring the money deposited therein in Rodolfo B. Ambion's other account at the PNB under Account No. that in a Certification dated August 28, 2008 of the PNB Tagaytay Branch, signed by Rovilma G. Delansing, PNB Sales and Service Officer, and Carlito N. Mercado, PNB Sales and Service Head, the Account Name Agueda Ambion Garcia under Account No. s an ITF account for Rodolfo B. Ambion; that the surviving heirs of Agueda A. Garcia namely: Ireneo and his only son, Jonathan Garcia, have executed an Affidavit attesting that they are not entitled to the money deposited under Account Name Agueda A. Garcia with Account No. previously under Account Name Agueda A. Garcia ITF Rodolfo B. Ambion under Account No. , since the same did not form part of the estate of Agueda A. Garcia after her death considering that Rodolfo B. Ambion is the legitimate owner thereof; and that they have also waived their rights over the said deposit and affirmed that the same is truly owned by Rodolfo B. Ambion.

Based on the foregoing representations, you now request for a Certification that the Account Name Agueda A. Garcia ITF Rodolfo B. Ambion, with Account No. , (now under Account Name Agueda Ambion Garcia bearing Account No. , is not included in the gross estate of the late Agueda A. Garcia and consequently not subject to estate tax.

In reply thereto, please be informed that the term "EstateTax" has been defined as the tax levied on the transmission of the properties of the decedent at death and is based on the value of the net estate regardless of the number of heirs or their relationship to the decedent.

Thus, the first step in the computation of estate tax is the determination of the gross estate. The gross estate is the total value of all property, whether real or **personal,** tangible or intangible, of the decedent at the time of his death. Pursuant to Section 88 (B) of the Tax Code, the estate shall be appraised at its fair market value as of the time of death.

It is undisputed that not only real but also personal property, like bank account, should form part of the gross estate of the decedent for purposes of computing the aforesaid estate tax. In the instant case, the bank deposit maintained by Agueda A. Garcia ITF Rodolfo B. Ambion in PNB Tagaytay Branch under Bank Account No. (now under Account Name Agueda Ambion Garcia bearing Account No. should be included in the computation of her gross estate. Under the ITF accounts, the owner of the account, sometimes called the trustee, is the person with the authority to access the accounts. The trustee owns the account and the funds in it. By naming a beneficiary of trust, the owner is declaring that the account will become the property of the beneficiary when the owner dies.

Banks defined "In Trust Accounts" under Brs Circular 3-1400/2006 dated February 16, 2006 as follows:

040524

> *"2. For In-Trust-For (ITF) Account. In an ITF/custodial account, the Depositor (i.e., parents, guardians, etc.) is deemed the primary account holder/ owner of the account and not the minor-beneficiary even if the name of the latter appears on the deposit instrument. The beneficiary shall be entitled to the balance of the account if the depositor dies without executing disaffirmation or revoking the trust. xxx xxx xxx" (Emphasis supplied)*

The subject trust is a ***revocable trust*** by virtue of its nature considering that the ITF account was transferred to the own account of Agueda A. Garcia. Please note that a revocable trust can be cancelled by the trustor anytime such that upon his or her death, assets placed in a revocable trust are still part of the trustor's estate and are subject to estate tax.

Notwithstanding the above discussion, please note that the subject account is currently under the sole name of Agueda A. Garcia. Clearly, the money deposited therein should form part of her gross estate subject to estate tax pursuant to Section 85 of the NIRC of 1997, as amended.

> *"SECTION 85. Gross Estate – The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated: Provided, however, That in the case of a nonresident decedent who at the time of his death was not a citizen of the Philippines, only that part of the entire gross estate which is situated in the Philippines shall be included in his taxable estate."*

SUCH BEING THE CASE, this Office holds that Bank Account No. (TF Rodolfo B. Ambion (now under Account Name Agueda Ambion Garcia bearing Account No.) should be included in the gross estate of the late Agueda A. Garcia and consequently subject to estate tax.

Very truly yours,

KIM S. JACINTO-HENARES
Commissioner of Internal Revenue

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