

Internal Revenue Service

Department of the Treasury

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Date:

December 15, 2000

TY:

Corporation =

Trustee =

Pooled Funds =

Dear :

This refers to our letters to Corporation dated May 8, 1986, and , in which we concluded that interest and dividend income derived in the United States by certain exempt Canadian pension funds and Canadian charitable organizations through pooled investment funds is exempt from U.S. taxation under Article XXI, paragraph 2(b) of the U.S.-Canada Income Tax Treaty (the "Treaty").

Under the facts as originally submitted, Corporation is a corporation organized under the laws of Canada. Corporation is primarily engaged in the business of providing investment management and consulting services in Canada. Corporation is not engaged in a trade or business in the United States, nor does it have a permanent establishment in the United States.

Corporation serves as investment counsel to Canadian pension funds and charitable organizations that are exempt from Canadian income tax. A number of the pension funds and charitable organizations are trusts, or have established trusts, for which Trustee acts as trustee.

Corporation affords a special service to exempt Canadian pension fund trusts and charitable trusts for which it serves as investment counsel and for which Trustee acts as trustee. Corporation has established a number of funds, Pooled Funds, whereby

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qualified pension fund trusts and charitable trusts are provided the opportunity to have their funds jointly invested. Corporation serves in the same capacity as investment advisor to the Pooled Funds as it does to the pension fund trusts and charitable trusts individually, and Trustee continues to act as trustee with respect to the Pooled Funds.

Although the Pooled Funds are potentially liable for Canadian income tax, they do not pay any Canadian tax because all of their income is currently distributed to their investors and they are entitled to deductions for amounts distributed.

Section 894(a) of the Internal Revenue Code states that the provisions of the Code shall be applied to any taxpayer with due regard to any treaty obligation of the United States which applies to such taxpayer.

Article XXI (Exempt Organizations), paragraph 1 of the Treaty provides:

Subject to the provisions of paragraph 3, income derived by a religious, scientific, literary, educational or charitable organization shall be exempt from tax in a Contracting State if it is resident in the other Contracting State but only to the extent that such income is exempt from tax in that other State.

Article XXI, paragraph 2 provides:

Subject to the provisions of paragraph 3, income referred to in Articles X (Dividends) and XI (Interest) derived by:

(a) A trust, company, organization or other arrangement that is a resident of a Contracting State, generally exempt from income taxation in a taxable year in that State and operated exclusively to administer or provide pension, retirement or employee benefits; or

(b) A trust, company, organization or other arrangement that is a resident of a Contracting State, generally exempt from income taxation in a taxable year in that State *and operated exclusively to earn income for the benefit of an organization referred to in subparagraph (a)*;

shall be exempt from income taxation in that taxable year in the other Contracting State. (Emphasis added.)

Article XXI, paragraph 3, states that the provisions of paragraphs 1 and 2 shall not apply with respect to the income of a trust, company, organization or other arrangement from carrying on a trade or business or from a related person other than a person referred to in paragraph 1 or 2.

The legislative history of Article XXI(2)(b) indicates that it was intended to provide

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mutual exemption for organizations acting as conduits for tax exempt pension funds.

Article X (of the First Protocol amending the 1980 Tax Convention With Canada) amends Article XXI of the proposed treaty to make it clear that an entity used exclusively as a conduit to earn income *for an employee benefit plan or fund* is subject to the same treaty rules as an employee benefit plan or fund.

S. Rep. No. 98-22, at 51 (1984)(emphasis added).

The letters to Corporation, dated May 8, 1986 and June 17, 1987, conclude that the interest and dividend income derived from the United States by the Canadian pension trusts and charitable trusts through the Pooled Funds is exempt from U.S. taxation under section 894(a) and Article XXI(2)(b) of the Treaty.

After reconsideration, we have concluded that interest and dividend income derived from the United States by pooled funds that include both Canadian pension trusts and charitable trusts is not exempt from U.S. taxation under Article XXI(2)(b) of the Treaty. A pooled fund that includes as an investor an organization not described in Article XXI(2)(a) is not entitled to benefits under Article XXI(2)(b).

The private letter rulings dated May 8, 1986 and June 17, 1987 are revoked to the extent they are inconsistent with this conclusion. However, pursuant to the authority granted in section 7805(b) of the Code, this revocation will only apply to interest and dividends paid after January 1, 2002.

This ruling is directed only to the taxpayer that requested the original rulings and its successors. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the power of attorney on file with this office, the original of this letter is being sent to Corporation's representative and a copy of this letter is being sent to Corporation.

Sincerely,
M. GRACE FLEEMAN
Assistant to the Branch Chief, Branch 1
Associate Chief Counsel (International)

cc: