

1. PURPOSE

This revenue procedure sets forth the information that a beneficiary of a Canadian registered retirement savings plan (“plan”) must furnish to elect to defer United States income tax on all or some of the earnings accrued in the plan during the taxable year. Deferral is available only for earnings that are attributable to contributions the beneficiary has made to the plan while a resident of Canada.

2. BACKGROUND

Article XXIX(5) of the United States-Canada Income Tax Convention, 1986-2 C.B. 258, provides a method to resolve conflicts between the United States and Canadian tax treatment of Canadian registered retirement savings plans.

Canadian registered retirement savings plans are provided certain income tax benefits for Canadian tax purposes; however, these plans do not meet the requirements for qualification as individual retirement accounts under section 408(a) of the Internal Revenue Code. As a result, the earnings of such a plan are includable currently in the gross income of the beneficiary of the plan for United States income tax purposes. Canada defers taxing the earnings of such plans, but imposes tax on actual distributions from the plans. Paragraph 5 of Article XXIX of the Convention is intended to prevent a mismatch of the inclusion of earnings in United States gross income and the foreign tax credits attributable to the Canadian tax on subsequent distributions from such plans to the extent contributions are made while the beneficiary is a resident of Canada. *See* Technical Explanation of The Convention Between The United States Of America And Canada With Respect To Taxes On Income And On Capital Signed At Washington, D.C. on September 26, 1980. 1986-2 C.B. at 295. Under paragraph 5, a beneficiary of a Canadian registered retirement savings plan may elect to defer United States taxation on earnings reasonably attributable to contributions made while the beneficiary is a resident of Canada. This deferral continues until the earnings are distributed from the plan. The election is not available with respect to earnings accrued during the taxable year that are reasonably attributable to contributions made to the plan by the beneficiary while that person was not a Canadian resident.

3. ELECTION PROCEDURES AND COMPUTATIONS

.01 A beneficiary of a Canadian registered retirement savings plan may elect for a tax year (the “current year”) to defer United States income tax on certain current-year earnings of the plan that are not distributed to the beneficiary. To qualify for deferral, the earnings must be attributable to contributions made during periods of Canadian residency. An election to defer is made by the beneficiary attaching to the beneficiary's United States federal income tax return, as provided in 3.02 below, a statement that

contains for each plan the information and computation of the earnings deferred as determined in the manner set forth below.

1 The name of the trustee of the plan and the plan account number, if any.

2 The total amount of earnings the plan derived in the current year.

3 The total amount of contributions made to the plan while a resident of Canada (including rollover amounts) as of the end of the taxable year.

4 The total amount contributed to the plan (including rollover amounts) in all years.

5 The amount of earnings that will be deferred under Article XXIX(5) of the Convention for the current year, which is determined by multiplying the amount in item 2 above by a fraction, the numerator of which is item 3 above and the denominator of which is item 4 above.

6 The balance in the plan at the end of the current year.

.02 For tax years ending on or after the date of publication of this revenue procedure, an election must be made by attaching a statement to the beneficiary's timely filed United States federal income tax return (including any extensions) in the form prescribed in paragraph.01. An election once made for a taxable year cannot be revoked except with the consent of the Commissioner and covers all plans of the beneficiary. Each spouse who is a beneficiary of a plan must file a separate election under this revenue procedure.

.03 Upon examination, a beneficiary must be able to establish to the satisfaction of the Internal Revenue Service that the beneficiary was a resident of Canada when the contributions to the plan reported in item 3 paragraph.01 were made. Whether a beneficiary was a resident of Canada is determined under the principles described in Article IV of the Convention.

.04 Once an election has been made under this revenue procedure, then, for each taxable year during which the taxpayer holds an investment in a plan, a statement must be attached to the beneficiary's United States federal income tax return that shows

(i) the last tax year an election to defer was made under this revenue procedure, and

(ii) the information listed in item 6 of.01 above.

4. DISTRIBUTIONS FROM A REGISTERED RETIREMENT SAVINGS PLAN

Distributions received by a beneficiary from a Canadian registered retirement savings plan shall be included in gross income by the beneficiary in the manner provided under section 72 of the Code. The “taxpayer's investment in the contract” shall be determined as follows:

01. For a person who is a U.S. citizen in all years for which contributions are made to the plan (and who, therefore, is subject to tax on worldwide income in all years), the gross investment in the contract under section 72(c)(1)(A) is the sum of:

- (i) Employee contributions from after-tax (that is, after U.S. tax) earnings, and
- (ii) Employer contributions included in the U.S. gross income of the employee. (These contributions do not include payments exempt from U.S. tax under section 911).

02. For a person who is not a U.S. citizen or a U.S. resident in any years for which contributions are made to the plan, the gross investment in the contract under section 72(c)(1)(A) is equal to the lesser of (a) the fair market value of the assets in the plan at the time the beneficiary became a U.S. citizen or resident, or (b) the sum of contributions to the plan plus earnings accrued in the plan at the time the beneficiary became a U.S. citizen or resident. This amount does not include unrealized appreciation in the plan assets.

03. For a person who is not a U.S. citizen or a U.S. resident in the initial years for which contributions are made to the plan, but becomes a U.S. citizen or resident at a later date and makes additional contributions, the gross investment in the contract under section 72(c)(1)(A) is the sum of:<Page 597>

- (i) The amount computed under paragraph 4.02 at the time the beneficiary became a U.S. citizen or resident, plus
- (ii) The amount computed under paragraph 4.01 for the period commencing after the date the taxpayer became a U.S. citizen or resident and during which the taxpayer made additional contributions to the fund.

5. DISTRIBUTIONS FROM A REGISTERED RETIREMENT INCOME FUND

According to Rev. Rul. 89-95, page 131, this Bulletin, a rollover from a registered retirement savings plan into a registered retirement income fund (RRIF) by a U.S. citizen or resident will not terminate the deferral of income allowed the U.S. beneficiary under Article XXIX, Paragraph (5) of the Convention. The ruling holds that an RRIF is treated as a substitute for the registered retirement savings plan. Therefore, the distribution rules prescribed in section 4 of this revenue procedure will also apply to a distribution from an

RRIF if the RRIF is treated as a substitute for a registered retirement savings plan under the facts described in Rev. Rul. 89-95.