

## Internal Revenue Service

## Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:INTL:Br1-PLR-117605-99

Date:

April 12, 2000

In Re:

TY:

Legend:

Company A =

Annuity Contract =

Dear :

This is in reply to your letter dated October 27, 1999, as amended by your letter dated March 22, 2000, requesting a ruling under the United States - United Mexican States Income Tax Treaty, signed on September 18, 1992 (the "Treaty"), and section 1441 of the Internal Revenue Code with respect to payments from Annuity Contract to owners and/or beneficiaries who are residents of Mexico under the Treaty and who are not citizens of the United States.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Company A intends to sell Annuity Contract to individual residents of Mexico who are not citizens of the United States. Annuity Contract will not be sold as an individual retirement annuity and will not be sold pursuant to any arrangement relating to compensation for services. Annuity Contract is marketed and sold only to individuals. It is designed, marketed, and purchased as a long-term retirement investment vehicle.

When Annuity Contract is issued, a date will be selected upon which annuity payments are to start in accordance with one of the options specified in Annuity Contract. If the owner dies prior to the selected date, the value of the contract will be paid to the designated beneficiary either in a lump sum or under one of the specified options. In addition, the owner may at any time, upon notice to Company A, surrender the value of the contract in part or in full in exchange for a lump sum payment. Withdrawals at other

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than specified times will be subject to withdrawal charges.

## RULING REQUESTED

You have requested a ruling that distributions under Annuity Contract, whether paid in a series of payments or in a lump sum, to any owner or beneficiary who is a resident of Mexico and who is not a citizen of the United States will be taxable under the Treaty only by Mexico and thus will not be subject to taxation by the United States.

## LAW AND ANALYSIS

Section 871(a) of the Code provides, generally, that a nonresident alien individual is subject to a 30-percent tax on amounts received as interest (other than original issue discount as defined in section 1273), dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, and other fixed or determinable annual or periodical gains, profits, and income to the extent the amount so received is from sources within the United States, but only to the extent the amount so received is not effectively connected with the conduct of a trade or business within the United States.

Section 1441(a) of the Code provides, in part, for the withholding of tax at a 30-percent rate on the items of income described in section 871(a). Section 1.1441-2(b)(1)(ii) of the Income Tax Regulations, that will apply to payments made after December 31, 2000, provides that, "[i]f an item of income falls within the class of income contemplated in the statute..., it is immaterial whether the payment of that item is made in a series of payments or in a single lump sum." Section 1.1441-2(a)(1) of the Regulations, that applies to payments made before January 1, 2001, includes a similar provision.

Section 894(a) requires that the provisions of the Code be applied with due regard to any treaty obligation of the United States that applies to the taxpayer.

Article 19, paragraph 2 of the Treaty provides that annuities derived and beneficially owned by a resident of a Contracting State shall be taxable only in that State. The term "annuities" as used in this paragraph means a stated sum paid periodically at stated times during a specified number of years, under an obligation to make the payments in return for adequate and full consideration (other than services rendered).

The Technical Explanation of the Treaty prepared by the Treasury Department states that Article 19, paragraph 2 "is intended to cover traditional annuity arrangements which provide retirement benefits to individuals. It is not intended to exempt from tax at source income from arrangements that are a variation of traditional annuities and that accrue to corporations or other legal persons."

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## HOLDING

Based solely on the information submitted and on the representations made by the taxpayer, and provided that the owner is an individual and that owner or beneficiary is a resident of Mexico (within the meaning of Article 4 of the Treaty) on the date of each distribution and that the appropriate documentation is filed with Company A pursuant to section 1.1441-6 of the Income Tax Regulations, it is held that distributions to the owner or beneficiary under Annuity Contract will constitute annuity distributions under Article 19, paragraph 2 of the Treaty that will not be subject to federal income tax under section 871(a) and will not be subject to withholding under section 1441.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. No opinion was requested and none is expressed as to whether Annuity Contract satisfies the requirements for qualification as an annuity under section 72 of the Code.

This ruling is directed only to the taxpayer(s) requesting it. 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, a copy of this letter is being sent to the taxpayer.

A copy of this letter must be attached to any income tax return to which it is relevant.

Sincerely,

M. Grace Fleeman  
Assistant to the Branch Chief, Branch 1  
Office of Associate Chief Counsel  
(International)

cc:

Assistant Commissioner (International)  
International District Operations OP:IN:D  
Chief, Examination Division Assistant Commissioner International