

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Date of Communication: Not Applicable

Person To Contact: _____, ID No. _____

Telephone Number: _____

Refer Reply To:
CC:INTL:B01
PLR-147895-12

Date:
April 24, 2013

TY:

X =

Province R =

The Fund =

Trust Agreement =

Y =

Dear _____:

This is in response to a letter from your authorized representative dated _____, requesting a ruling that interest and dividends derived by the Fund will be exempt from U.S. withholding tax under Article XXI(3) of the U.S.-Canada income tax treaty (the "Treaty"). The information submitted is substantially as set forth below.

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.

X is a corporation amalgamated and governed under the laws of the Province R. X serves as investment manager of the Fund, which is a trust organized under the laws of the Province R. The Fund's objective is to track the performance of the Standard & Poor's 500 Composite Stock Index, and it invests primarily in common shares of U.S. corporations included in that index. Y, a trust company resident in Canada and incorporated under and governed by the laws of Canada, acts as trustee for the Fund.

The beneficiaries of the Fund are its investors or “Unitholders”. X represents that all of the Fund’s current Unitholders are exempt from Canadian income tax. The Fund’s Unitholders consist of (i) Canadian registered pension plans, whose assets are held in trust or by a pension corporation established for the purpose of administering the pension plan (“Canadian RPP Investors”) and (ii) charitable organizations and charitable foundations (“registered charities”) (collectively, Canadian Exempt Entities). X represents that none of the Canadian Exempt Entities currently holds units of the Fund as part of carrying on a trade or business in the United States. X also represents that each Canadian Exempt Entity is a trust, company, organization or other arrangement referred to in either Article XXI(1) or (2) of the Treaty.

X represents that each Canadian Exempt Entity that is a registered charity and that will invest, directly or indirectly, in the Fund is a qualifying person within the meaning of Article XXIX A(2) of the Treaty by virtue of satisfying subparagraph (g) of that paragraph. X also represents that each Canadian Exempt Entity that is a Canadian RPP Investor and that will invest, directly or indirectly, in the Fund is a qualifying person within the meaning of Article XXIX A(2) of the Treaty by virtue of satisfying subparagraph (h) of that paragraph.

X represents that the Fund is resident in Canada for Canadian legal and tax purposes. As a trust resident in Canada, the Fund is potentially liable for Canadian income tax under Part I of the Income Tax Act (Canada) (the “ITA”). X represents, however, that Part I of the ITA permits a Canadian trust to deduct any amount that is paid or payable in the year by the trust to beneficiaries of the trust. X represents that the Trust Agreement provides that the income of the Fund for each year will be paid or be made payable to its beneficiaries in an amount sufficient to ensure that the Fund will not have any income subject to Canadian income tax. Because the Fund is a trust for Canadian income tax purposes and is required to pay or make payable all of its income to its beneficiaries under the Trust Agreement, X represents the Fund is exempt from Canadian income tax.

X represents that the Fund is currently a trust, company, or other arrangement within the meaning of Article XXI(3) of the Treaty. X represents that the Fund is a resident of Canada under Article IV(1) of the Treaty. X represents that the Fund is a qualifying person within the meaning of Article XXIX A(2) of the Treaty by virtue of satisfying subparagraph (i) of that paragraph.

Under the Trust Agreement, X has the authority, as manager, to introduce new investors to the Fund and to approve or reject subscriptions for units in the Fund. Pursuant to that authority, X proposes to permit the investment in the Fund of monies held in segregated funds established solely in connection with a Segregated Fund Contract (defined below) between a Canadian life insurance corporation and a Canadian Exempt Entity.

A “segregated fund” refers to a portfolio of investments that is acquired and administered by a Canadian life insurance corporation and that is segregated from the insurance company’s other assets. The segregated fund is established in connection with one or more variable annuity contracts entered into by the Canadian life insurance corporation and a policyholder (a “Segregated Fund Contract”). Under a Segregated Fund Contract, all income and gains earned on the portfolio held in the related segregated fund that are proportionally allocable to an investor are reinvested on behalf of the investor or, if so requested, paid out to the investor.

Under paragraph 138.1(1)(a) of the ITA, a segregated fund is deemed to be an inter vivos trust for Canadian tax purposes and is referred to as a “segregated fund trust.” The insurance corporation that has set aside assets pursuant to a Segregated Fund Contract is deemed to be the trustee of the deemed segregated fund trust. The deemed segregated fund trust is considered to be a resident of Canada unless the trustee holds the segregated fund trust property in the course of carrying on a trade or business outside Canada. X represents that the segregated funds at issue, which are established in connection with a Segregated Fund Contract between a Canadian life insurance corporation and a Canadian Exempt Entity, will not be held by the relevant insurance corporations in the course of carrying on a trade or business outside of Canada.

The ITA provides that the amount of income of a deemed segregated fund trust for any year is deemed to be an amount that has become payable to the beneficiaries (i.e., the investors under the related annuity contracts). Pursuant to the provisions under the ITA regarding the taxation of trusts (described above), a deemed segregated fund will be entitled to a deduction that will fully offset its income.

With respect to the segregated funds at issue, X represents that the entire portfolio will be funded solely with premiums paid by Canadian Exempt Entities. None of the assets held in the segregated funds will be funded by an insurance corporation and such assets will be segregated from other assets of the life insurance corporation.

X represents that, following the proposed investment, all issued and outstanding units of the Fund will be held either (1) directly by Canadian Exempt Entities or (2) within a segregated fund established pursuant to a contract between a Canadian Exempt Entity and a Canadian life insurance corporation. X represents that all relevant Canadian Exempt Entities, whether they invest directly or indirectly in the Fund, will be resident in Canada for Canadian income tax purposes and will be exempt from Canadian income tax under subsection 149(1) of the ITA. X represents that the U.S. source interest and dividends derived by the Fund will not be income from carrying on a trade or business in the United States or income from a related person within the meaning of Article XXI(4) of the Treaty.

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

Article IV (Residence), paragraph 1 of the Treaty provides:

For the purposes of this Convention, the term “resident” of a Contracting State means any person that, under the laws of that State, is liable to tax therein by reason of that person’s domicile, residence, citizenship, place of management, place of incorporation or any other criterion of a similar nature, but in the case of an estate or trust, only to the extent that income derived by the estate or trust is liable to tax in that State, either in its hands or in the hands of its beneficiaries.

Article XXI (Exempt Organizations) provides in relevant part:

1. Subject to the provisions of paragraph 4, 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 Contracting State.

2. Subject to the provisions of paragraph 4, income referred to in Articles X (Dividends) and XI (Interest) derived by 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 shall be exempt from income taxation in that taxable year in the other Contracting State.

3. Subject to the provisions of paragraph 4, income referred to in Articles X (Dividends) and XI (Interest) derived by 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 one or more of the following:

(a) An organization referred to in paragraph 1; or

(b) A trust, company, organization or other arrangement referred to in paragraph 2;

shall be exempt from income taxation in that taxable year in the other Contracting State.

4. The provisions of paragraphs 1, 2 and 3 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, 2 or 3.

Article XXIX A (Limitation on Benefits) provides in relevant part:

1. For purposes of the application of this Convention by a Contracting State,
 - (a) A qualifying person shall be entitled to all of the benefits of this Convention; and
 - (b) except as provided in paragraph 3, 4, and 6, a person that is not a qualifying person shall not be entitled to any benefits of this Convention.
2. For the purposes of this Article, a qualifying person is a resident of a Contracting State that is:

* * * *

- (g) A not-for-profit organization, provided that more than half of the beneficiaries, members or participants of the organization are qualifying persons;
- (h) A trust, company, organization or other arrangement described in paragraph 2 of Article XXI (Exempt Organizations) and established for the purposes of providing benefits primarily to individuals who are qualifying persons, or persons who were qualifying persons within the five preceding years; or
- (i) A trust, company, organization or other arrangement described in paragraph 3 of Article XXI (Exempt Organizations) provided that the beneficiaries of the trust, company, organization or other arrangement are described in subparagraph (g) or (h).

Based solely on the information submitted and on the representations made by the taxpayer, and provided that the Fund is a resident of Canada within the meaning of Article IV of the Treaty and a qualifying person within the meaning of subparagraph (i) of Article XXIX A(2) of the Treaty and further provided that

- (i) each Canadian Exempt Entity that invests directly in the Fund is a trust, company, organization or other arrangement described in either Article XXI(1) or (2) of the Treaty;
- (ii) each Canadian Exempt Entity that invests indirectly in the Fund pursuant to a contract between the Canadian Exempt Entity and a Canadian life insurance corporation is a trust, company, organization, or other arrangement described in either Article XXI(1) or (2) of the Treaty, and

(iii) the units of the Fund are held, at all relevant times, exclusively by or for the benefit of Canadian Exempt Entities as described in clause (i) or (ii) above,

we conclude that, following the investment proposed by X described above, U.S. source dividends and interest derived by the Fund will be exempt from U.S. income tax pursuant to Article XXI(3) of the Treaty.

The above ruling is not applicable to any dividend or interest income derived from carrying on a trade or business in the United States or from a “related person” under Article XXI(4) of the Treaty.

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.

This ruling is directed only to the taxpayer requesting it. I.R.C. § 6110(k)(3) 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 your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

M. Grace Fleeman
Senior Technical Reviewer
CC:INTL: Br 1

cc: