



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
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[REDACTED]
COR-110488-98

[REDACTED]

Re: [REDACTED]

Dear [REDACTED]:

This is in response to your letter received May 7, 1998, requesting general information as to the benefits available to dual U.S. and Italian citizens under the Convention Between the United States and Italy for the Avoidance of Double Taxation with Respect to Taxes on Income and the Prevention of Fraud and Fiscal Evasion, that entered into effect on December 30, 1985 (the Convention).

As we noted in our response to your previous letter dated August 28, 1997, absent any tax convention, citizens of the United States are taxed on their worldwide income by reason of their U.S. citizenship. It is our understanding that citizens of Italy are taxed on their worldwide income only if they are resident in Italy. If an individual is both a U.S. citizen and an Italian citizen resident in Italy, both countries will impose tax on the individual's worldwide income and the individual is required to comply with both countries' income tax requirements.

Further, as we noted in our previous response, paragraph (a) of Article 19(2) of the Convention provides generally that any pension paid by, or out of funds created by, a Contracting State or a political or administrative subdivision or local authority thereof to an individual in respect of services rendered to that State or subdivision shall be taxable only in that state. However, Paragraph (b) of Article 19(2) provides that such pension shall be taxable only in the other Contracting State if the individual is a resident and a national of that state.

Article 4(1) provides, in general, that for purposes of the Convention, the term "resident of a Contracting State" means any person who, under the laws of that State,

is liable to tax therein by reason of his domicile or residence. Paragraph (a) provides that the term resident of a Contracting State does not include any person who is liable to tax in that State in respect only of income from sources in that State.

Paragraph (h) of Article 3(1) provides that the term "nationals" means all individuals possessing the citizenship of a Contracting State.

In order to benefit from the exemption from U.S. tax provided by Article 19(2)(b) of the Convention, an individual who is a resident and a national of Italy must send Form W-8BEN to the payor of his pension benefits to certify that he is eligible for the benefits of the Convention. A copy of Form W-8BEN is enclosed.

In order to apply for a refund of previous amounts of U.S. tax that have been withheld from his pension benefits, the individual must file a Form 1040NR indicating that a refund is due to him. The Forms 1042-S that were issued on an annual basis by the payor of the pension benefits should be attached to the Form 1040NR. The prior Forms 1042-S will indicate to the Internal Revenue Service the amounts of U.S. tax that were withheld from the benefit payments. Copies of a 1999 Form 1040NR, the Form 1040NR instructions and Form 1042-S are enclosed.

We hope this information has been helpful. Please note that this letter constitutes general information only and does not constitute a ruling that can be used or cited as precedent. If you have any questions, please contact [REDACTED], at (202) 622-3880 (not a toll free call).

Sincerely,

M. Grace Fleeman
Assistant to the Branch Chief
CC:INTL:Br1

encl: as stated.