



OFFICE OF  
CHIEF COUNSEL

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

Number: **INFO 2003-0228**  
Release Date: 12/31/2003  
CC:INTL:BR1: [REDACTED]  
GENIN-141933-03  
UIL # 9114.03-02

[REDACTED]

Reference: Distributions of Pension Plans to Nonresident Aliens

Dear [REDACTED]:

This responds to your letter to the Associate Chief Counsel (International) dated July 7, 2003. In response to your inquiry, we are providing the following general information. This information letter is advisory only and has no binding effect on the Internal Revenue Service.

You have asked about the application of Article 18 (Pensions, Annuities, Alimony and Child Support) of the United States-Australia Income Tax Treaty ("Treaty"), available on the internet at <http://www.irs.treas.gov/pub/irs-trty/aus.pdf>, to a nonresident alien who has worked in the United States as an independent contractor and returned to Australia. Your letter refers specifically to Australian athletes and actors who worked temporarily in the United States, accumulated a U.S. pension, and then returned to Australia. We assume for purposes of this letter that the individuals will be residents of Australia within the meaning of paragraph 1(a) of Article 4 (Residence) at the time the distributions are made.

Article 18 of the Treaty provides, in pertinent part (emphasis added):

- (1) Subject to the provisions of Article 19 (Governmental Remuneration), pensions and other similar remuneration paid to an individual who is a resident of one of the Contracting States in

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consideration of past employment shall be taxable only in that State.

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- (4) The term "pensions and other similar remuneration", as used in this Article, means periodic payments made by reason of retirement or death, in consideration for services rendered, or by way of compensation paid after retirement for injuries received in connection with past employment.

The 1996 U.S. Model Income Tax Treaty ("Model Treaty"), available on the internet at <http://www.irs.treas.gov/pub/irs-trty/usmodel.pdf>, contains a provision similar to Article 18 of the Treaty. The Treasury Department Technical Explanation to the Model Treaty sets forth the requirements that a pension distribution must satisfy in order to qualify for exemption from U.S. taxation under the pension article. The Technical Explanation contains the following:

In addition, certain distribution requirements must be met before distributions from these plans would fall under paragraph 1. To qualify as a pension distribution or similar remuneration from a U.S. plan the employee must have been either employed by the same employer for five years or be at least 62 years old at the time of the distribution. In addition, the distribution must be made either (A) on account of death or disability, (B) as part of a series of substantially equal payments over the employee's life expectancy (or over the joint life expectancy of the employee and a beneficiary), or (C) after the employee attained the age of 55. Finally, the distribution must be made either after separation from service or on or after attainment of age 65. A distribution from a pension plan solely due to termination of the pension plan is not a distribution falling under paragraph 1.

When a distribution does not meet these requirements, it does not qualify as a "pension" for purposes of Article 18 of the Model Treaty. Although the Technical Explanation to the Model Treaty is not directly applicable to the Treaty, similar principles would be applicable. In a case where a distribution does not qualify as a "pension," the distribution then may be subject to taxation in the United States as income from employment. Depending on the nature of the employment, any of Article 14 (Independent Personal Services), Article 15 (Dependent Personal Services), or Article 17 (Entertainers) might apply to the distribution.

We hope this information will be helpful to you. If you require a definitive determination of the law applicable to your particular facts, you may submit a

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request for a private letter ruling to this office pursuant to the rules set forth in Revenue Procedure 2003-1, which is available on the Internet at <http://www.irs.gov/pub/irs-irbs/irb03-01.pdf>. If you should have any further questions in this matter, please contact [REDACTED] at [REDACTED] (not a toll-free number).

Sincerely,

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M. Grace Fleeman  
Senior Counsel, Branch 1  
Office of Associate Chief Counsel  
(International)