



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

OFFICE OF  
CHIEF COUNSEL

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Dear :

This letter responds to your request for information dated April 13, 2005. In your letter, you requested certain information regarding the treatment of social security benefits under the Convention Between the United States of America and The Republic of Austria for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income (the "Treaty"), effective on January 1, 1999.

Paragraph 1(b) of Article 18 (Pensions) of the Treaty provides:

1. Subject to the provisions of Article 19 (Government Service),

\* \* \* \*

- b. *social security payments* and other public pensions paid by a Contracting State to an individual who is a resident of the other Contracting State or a citizen of the United States shall be taxable only in the first-mentioned Contracting State.

The Treasury Department's Technical Explanation of the Treaty explains that:

Subparagraph 1(b) provides that social security payments and other public pensions paid by one of the Contracting States to a resident of the other Contracting State or to a United States citizen are taxable only in the paying State. The reference to U.S. citizens is to ensure that a social security payment by Austria to a U.S. citizen not resident in the United States will not be taxable by the United States. The fact that these provisions are also subject to the provisions of Article 19 places the treatment of social security benefits paid in respect of past government service under the rules of that article rather than this one.

\* \* \* \*

Subparagraph 1(b) and paragraph 3 of this Article are among the exceptions to the saving clause of paragraph 4 of Article 1 (Personal Scope) found in

subparagraph 5(a) of that Article. *Thus, Austrian social security benefits paid to a U.S. resident or citizen are exempt from U.S. taxation.*

Generally, an individual who claims that income is exempt from U.S. tax pursuant to a tax treaty is not required to report the income on his or her U.S. individual income tax return. If an individual takes the position that any U.S. tax is overruled or otherwise reduced by a U.S. treaty, the individual generally must disclose the position on Form 8833, Treaty-Based Return Position Disclosure Under § 6114 or 7701(b), and include the Form 8833 along with his or her income tax return. However, the filing of Form 8833 is not required if an individual claims a treaty reduces or modifies the taxation of income from dependent personal services, pensions, annuities, social security and other public pensions, or income of artists, athletes, students, trainees, or teachers.

You may find it useful to review chapter 9, Tax Treaty Benefits, of Publication 519, U.S. Tax Guides for Aliens. Chapter 9 describes the general procedure for claiming tax treaty benefits.

This information letter is advisory only and has no binding effect on the Internal Revenue Service. It is intended for informational purposes only and does not constitute a ruling. If you would like a definitive determination concerning a particular set of facts, you must comply with the requirements for obtaining a private letter ruling that are set forth in Revenue Procedure 2005-1 § 7, 2005-1 I.R.B. 1.

If you have any additional questions, please contact our office at .

Sincerely,

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M Grace Fleeman  
Senior Counsel  
Office of Chief Counsel (International)