

March 1991-174 -- Charitable donations — non-refundable tax credits claimed by U.S. residents

Date: March 1991

Reference: 118.1, Canada–U.S. Tax Convention Canada-U.S. Tax Treaty:Art. XXI

Subject: Charitable Donations - Non-Refundable Tax Credits Claimed by U.S. Residents Your File  
No. HDB9412 - 2 - 1 - U3

This is in reply to your Memorandum dated January 30, 1991 concerning Article XXI of the Canada-United States Income Tax Convention, 1980 (the "Convention").

You requested our comments on the following question posed by you:

"If a U.S. resident can claim the non-refundable tax credit for a donation made to an American university under the provisions set forth in the Act, would the provisions outlined in Article XXI of the Convention apply to deny him the credit?"

The answer to your question is: no.

Paragraph 6 of Article XXI of the Convention applies only in respect of "gifts by a resident of Canada". It does not apply in respect of a U.S. resident.

The purpose of paragraph 6 of Article XXI of the Convention is to assist charitable organizations resident in the United States by permitting Canadian residents who make gifts to such organizations a deduction (now a tax credit) for Canadian income tax purposes (subject to the limitations set forth in paragraph 6 of Article XXI) notwithstanding that such organizations are not registered as charities in Canada or otherwise of a type that the Act prescribes as being eligible for creating a deduction or tax credit in respect of donations made to them (e.g. organizations of the type set forth in paragraphs (a) through (g) of subsection 118.1(1) of the Act).

The Memorandum from Specialty Rulings Directorate dated March 15, 1989 was addressing deductions authorized by the income tax conventions (not the Act) in respect of donations made to organizations resident in the United States that were not registered as charities in Canada or otherwise of a type that the Act prescribes as being eligible for creating a deduction (or tax credit) in respect of donations made to them. The March 15, 1989 Memorandum pointed out that the relevant provisions of the 1942 Convention applied to both residents of Canada and residents of the United States whereas the 1980 Convention only applies to residents of Canada insofar as provisions is made by the conventions (as opposed to the Act) for expanding the type of organizations (to U.S. resident organizations not prescribed by the Act) eligible for creating a deduction (or tax credit). The March 15, 1989 Memorandum did not mean to suggest that the conventions in any way limited the deductions (or tax credits) available to residents of the United States pursuant to provisions of the Act.

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