



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

OFFICE OF
CHIEF COUNSEL

April 26, 2000

Number: **200025051**
Release Date: 6/23/2000
UIL: 7121.00-00

FREV-101828-00
CC:INTL:Br1

MEMORANDUM FOR Assistant Commissioner (International) OP:IN
Attn: Mr. Rob Stanchik, Examination Branch

FROM: John M. Staples, Assistant Chief Counsel
Associate Chief Counsel (International) CC:INTL

SUBJECT: Proposed Closing Agreement

Pursuant to your request, we have reviewed the closing agreement that taxpayer's counsel forwarded to our offices on April 8, 2000. As you know, this is the culmination of discussions between our offices and taxpayer's representatives that have extended over a period of more than six months.

In our view, the draft closing agreement is acceptable as an agreement in principle. However, it should be entered into on behalf of the Commissioner only after the Canadian corporation reveals its identity and the identities of its alien employees who performed services in the United States for compensation during the relevant periods. As you know, the Internal Revenue Service does not enter into closing agreements with anonymous taxpayers. In addition, prior to signing the closing agreement, your office should

- confirm that the Canadian corporation is not presently under examination and has not been notified of the initiation of any such examination;
- obtain from the Canadian corporation unredacted copies of the Forms 1120F, including Forms 8833, that it filed with the IRS for taxable years ended March 31, 1997 through March 31, 1999; and
- a list of the names and addresses of the Canadian corporation's employees who received compensation for services performed in the United States during 1997, 1998, and 1999.

After the closing agreement is executed for the Commissioner and for the taxpayer, the latter will be required to produce information and documents, including the following:

- Forms 941 for quarters ended March 31, 1997 through March 31, 2000, with payment of the income tax withholding and FICA liabilities reflected on these returns;
- payment of its FUTA liabilities for quarters ended March 31, 1997 through March 31, 2000;
- if requested by the IRS, Forms W-2 for employees subject to U.S. income tax on compensation paid by the Canadian corporation for services performed in the United States;
- information requested by the IRS to determine if the Canadian corporation maintained a permanent establishment in the United States for any open years;
- information requested by the IRS concerning issues arising under I.R.C. sec. 882(c) for any year for which the Canadian corporation did not file a protective return, as well as information concerning penalties imposed under I.R.C. sec. 6651 with respect to a taxpayer's failure to file U.S. income tax returns or to pay over any U.S. income taxes; and
- information concerning the residency status of the alien employees of the Canadian corporation.

It is our view that the draft closing agreement provides a basis for resolving the outstanding issues and fully protects the interests of the Internal Revenue Service. The closing agreement also brings noncompliant taxpayers back into the federal tax system and reasonably ensures future compliance.

If you have any questions or need further assistance, please do not hesitate to call me, Ed Williams (622-3268), or Leslie Rubenstein (622-4409).

JOHN M. STAPLES