



10.23.14

Information Letter 2014-04

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Subject California State Income Tax

Dear [REDACTED]

I am in receipt of your letter dated [REDACTED] 2014, in which you request clarification of my letter to you dated [REDACTED] 2013, regarding the taxability by California of income earned by employees of [REDACTED] in California.

In my [REDACTED] 2013, letter, I explained the Convention Between The United States of America and [REDACTED] With Respect to Taxes on Income and on Capital (the "Convention") does not apply to the State of California and its personal income tax imposed under the California Revenue and Taxation Code because the Convention specifically applies only to the Federal Income Tax imposed by the Internal Revenue Code ("IRC").¹ However, I suggested an alternative method for exemption was available through Internal Revenue Code section 893, to which California conforms through California Revenue and Taxation Code section 17146.

In your [REDACTED] 2014, letter you have specifically raised the issue that [REDACTED] employs persons who do not meet the reciprocal income tax privileges requirements for such employees to be exempt from federal taxation under Internal Revenue Code section 893. Thank you very much for attaching the Certification to the Secretary of the Treasury dated June 7, 2007, which sets forth the requirements which must be met for IRC section 893 to apply.² I understand that [REDACTED] occasionally employs persons who already reside in the United States at the time of their employment and, therefore, do not qualify for exemption from tax under IRC section 893. You have also disclosed that some of these employees have completed form I-508, "Waiver of Rights, Privileges, Exemptions and Immunities."

¹ See Convention Between The United States of America and Canada With Respect to Taxes on Income and on Capital, general effective date January 1, 1985, Article II.

² Exhibit A – Certification to the Secretary of the Treasury from the Secretary of State pursuant to IRC section 893 dated June 7, 2007.

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You have raised a concern regarding double taxation because you assert the Convention in this case leads to the income in question being subject to both [REDACTED] Federal and [REDACTED] taxes being collected. You explain that these employees are subject to a Federal surtax, which is the equivalent of a [REDACTED] income tax.

However, the reciprocal case is not true. If a U.S. Citizen were living in [REDACTED], and hired by the United States for employment by the United States in its embassy or consulate, under common practices and specifically California law, a state in the United States would not have grounds to tax the income. Presumably if such an employee were already living in [REDACTED] before employment and would presumably continue living in [REDACTED] after the end of such employment, the employee would be determined to be a nonresident of California or another state. As a nonresident, the employee's wage income would be sourced based on where the services were performed. Since the services would have been performed in [REDACTED], California (or such other state) would not tax the income at issue. Therefore, no double taxation issue arises under the Convention. It appears the double taxation issue arises under the [REDACTED] Income Tax Act and its federal surtax.

Consistent with my letter of [REDACTED] 2013, these employees are subject to California tax on their wage income from Canada. The Convention does not operate to exempt such income and, since IRC section 893 is not available, the income is not exempt through the operation of California Revenue and Taxation Code section 17146.

If you have any questions or concerns, please contact me at the above number.

Sincerely,

Natasha S. Page
Tax Counsel III

Enc.