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REV-PROC, 93FED ¶46,185, Income tax: Exemptions: United States-India tax treaty: Students or business apprentices.--, Revenue Procedure 93-20, I.R.B. 1993-13,10, (Mar. 09, 1993)

Revenue Procedure 93-20, I.R.B. 1993-13,10, March 9, 1993.

[Code Secs. 63, 151, 152, 873, 6013 and 7701]

Income tax: Exemptions: United States-India tax treaty: Students or business apprentices.--The IRS has set forth the exemptions, reliefs or reductions in respect of taxes on income from grants, scholarships, and employment that are available under the provisions of Article 21(2) of the United States-India Income Tax Treaty to an Indian student or business apprentice who is present in the United States for educational or training purposes. BACK REFERENCES: 93FED ¶6023.20, 93FED ¶8005.25, 93FED ¶8250.107, 93FED ¶28,062.0282, 93FED ¶36,471.724, and 93FED ¶43,926.50.

SECTION 1. PURPOSE

The purpose of this revenue procedure is to set forth the exemptions, reliefs or reductions in respect of taxes on income from grants, scholarships, and employment that are available, under Article 21(2) of the United States-India Income Tax Treaty (the "Treaty"), to an Indian student or business apprentice who is present in the United States for educational or training purposes.

SEC. 2. BACKGROUND

Under Article 21(1) of the Treaty, a student or business apprentice who is not a U.S. citizen and is or was a resident of India immediately before visiting the United States principally for educational or training purposes is exempt from U.S. tax on payments which arise outside the United States for maintenance, educational or training purposes.

In respect of grants, scholarships and remuneration from employment not covered by Article 21(1), Article 21(2) of the Treaty provides that an Indian student or business apprentice is entitled during his or her education or training to the same exemptions, reliefs or reductions in respect of taxes available to residents of the United States. However, such individuals are not treated as U.S. residents by virtue of the Treaty. Further, an Indian student or business apprentice (and such individual's immediate family members) temporarily present in the United States ordinarily will not be treated as a U.S. resident under the Internal Revenue Code. See sections 7701(b)(3)(D)(i), 7701(b)(5)(A)(ii), (iii), 7701(b)(5)(C), (D) of the Code; section 301.7701(b)-3(b)(3), (4), (8) of the Income Tax Regulations. Under the Code, the requirement of U.S. residence is satisfied only if the individual either (1) is a lawful permanent resident of the United States under section 7701(b)(1)(A)(i), or (2) meets the substantial presence test under section 7701(b)(1)(A)(ii).

Even though Indian students and business apprentices generally are classified as nonresident aliens, the Treaty entitles such individuals, in respect of U.S. taxes on grants, scholarships and remuneration from employment, to certain benefits that would otherwise be available only to a U.S. citizen or resident. The Treaty does not, however, provide that Indian students and business apprentices become U.S. residents subject to U.S. tax on their worldwide income. Therefore, under the Treaty, certain provisions (other than the exemptions, reliefs or reductions covered by Article 21(2)) that apply to U.S. residents remain inapplicable to Indian students and business apprentices. Accordingly, the U.S. tax provisions covered by Article 21(2) of the Treaty applicable to Indian students and business apprentices are described below. This list of provisions applicable to Indian students and business apprentices under the Treaty is exhaustive. Therefore, any other exemption, relief or reduction, that is available under the Code but that is not generally available to nonresident aliens, is not made available to Indian students and business apprentices under the Treaty or this revenue procedure.

SEC. 3. EXEMPTIONS, RELIEFS OR REDUCTIONS APPLICABLE TO INDIAN STUDENTS AND BUSINESS APPRENTICES

.01 *Standard deduction.* An Indian student or business apprentice who is eligible for the benefits of Article 21(2) of the Treaty may claim the standard deduction under section 63(c) of the Code even though such individual is a nonresident alien, provided that the Indian student or business apprentice does not claim itemized deductions under section 63(d) of the Code.

.02 *Spousal and dependency exemptions.* A nonresident alien generally may claim only one personal exemption under section 151(b) of the Code. Section 873(b)(3). Notwithstanding that Indian students and business apprentices are nonresident aliens, such individuals may claim spousal exemptions under section 151(b) and additional exemptions for dependents under section 151(c), if certain conditions are met. These conditions are discussed immediately below.

Section 151(a) of the Code allows certain exemptions in computing taxable income. Section 151(b) allows an exemption for the taxpayer. An additional exemption for the taxpayer's spouse is allowed if a joint return is not made, and if the spouse has no gross income (as defined in section 872(a)) for the relevant taxable year and is not the dependent of another taxpayer. Thus, if the preceding conditions are met, an Indian student or business apprentice may claim a spousal exemption.

Section 151(c) of the Code allows an additional exemption for each dependent subject to limitations described in sections 151 and 152. An Indian student or business apprentice may claim additional exemptions for children who reside with him or her in the United States at any time during the taxable year only if the conditions set forth in sections 151 and 152 are met, including the requirement that the dependents be U.S. citizens or nationals or residents of the United States, Canada, or Mexico. Section 152(b)(3). Dependents who are admitted to the United States on F-2, J-2 or M-2 visas are "exempt individuals" for purposes of the substantial presence test and, therefore, are not U.S. residents. Thus, an Indian student or business apprentice may not claim an exemption for dependents who are admitted to the United States on F-2, J-2 or M-2 visas.

SEC. 4. INSTRUCTIONS FOR FILING

.01 *Filing status.* Section 1(a) of the Code provides a tax rate schedule for married individuals that file a joint return under section 6013 of the Code. Section 6013(a)(1) provides that a husband and wife may not file a joint return if either individual is a nonresident alien at any time during the taxable year. Thus, to file jointly, both husband and wife must be either U.S. citizens or residents or be treated as such. An Indian student or business apprentice is not treated as a U.S. resident by virtue of either Article 21(2) of the Treaty or section 7701(b). Further, the ability to file a joint return is not an exemption, relief or reduction for purposes of Article 21(2) of the Treaty. Thus, except as discussed below, an Indian student or business apprentice may not file a joint return with his or her spouse.

Section 6013(g) of the Code provides an election to treat a nonresident alien spouse as a U.S. resident if the individual is married to a U.S. citizen or resident, and if both husband and wife elect such treatment. This election effectively requires that both the individual and his or her spouse are subject to tax on their worldwide income. Thus, an Indian student or business apprentice may file a joint return if the spouse is a U.S. citizen or resident in his or her own right and both husband and wife make an election under section 6013(g) to treat the student or business apprentice as a U.S. resident. In that case, however, the Indian student or business apprentice would not be entitled to the exemption provided by Article 21(1) of the Treaty and would be subject to U.S. income taxation on his or her worldwide income.

Similarly, an Indian student or business apprentice who qualifies for the benefits of Article 21(2) of the Treaty may not use the head of household tax rate schedule under section 1(b) of the Code. Filing status as a head of household is not an exemption, relief or reduction under Article 21(2) of the Treaty.

All married individuals, as defined in section 7703 of the Code, who do not file a joint tax return with their spouses must use the tax rate schedule for married individuals filing separately regardless of whether the individuals are U.S. citizens or residents or nonresident aliens. All unmarried individuals must file tax returns as individuals.

.02 *Other.* As a nonresident alien, an Indian student or business apprentice is required to file an income tax return on Form 1040NR. The Indian student or business apprentice may not use Form 1040 to file his or her income tax return, unless the spouse is a U.S. citizen or resident and both husband and wife make an election under section 6013(g) of the Code to treat the student or business apprentice as a U.S. resident.

An individual claiming the standard deduction and personal exemptions for withholding purposes must complete a Form W-4 annually, subject to the instructions provided in Rev. Proc. 88-24, 1988-1 C.B. 800, which provides procedures for reduced withholding under section 1441 of the Code with respect to U.S. source taxable grant or scholarship income. Those portions of Rev. Proc. 88-24 concerning the denial of the standard deduction and the allowance of only one personal exemption do not apply to Indian students and business apprentices under Article 21(2) of the Treaty and should be disregarded.

An Indian student or business apprentice claiming the spousal exemption should so indicate on line 7c of Form 1040NR (in the space provided for dependents). Only columns (1) and (4) of line 7c need to be completed.

An Indian student or business apprentice may claim the standard deduction by writing the words "Standard Deduction Allowed Under US/India Income Tax Treaty" on line 2 of Schedule A of Form 1040NR in the space provided for state and local income taxes.

SEC. 5. EFFECTIVE DATE

This revenue ruling is effective for taxable years beginning on or after January 1, 1992.

DRAFTING INFORMATION

The principal author of this revenue ruling is Judith Cavell of the Office of Associate Chief Counsel (International). For further information regarding this revenue procedure contact Judith Cavell at (202) 622-3860 (not a toll-free call).

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