

## **Tax relief available for Canadians immigrating to the U.S.**

By Patricia Porter Kryder

Canadians immigrating to the U.S. must relinquish their Canadian tax residency prior to leaving Canada. As a result, they are subject to a Canadian “departure tax” as if they had sold their property on the day of their departure. This “deemed sale” requires the payment of a tax, although the Canadian would continue to own the property.

The U.S. would impose a tax on the same property if sold by the Canadian immigrant once living in the U.S. The U.S. tax would be based upon the actual gain computed upon the difference between the basis of the property and the fair market value at the time of the sale, or the sales price. *Revenue Procedure 2010-19* permits the Canadian to make a gain recognition election for U.S. federal tax purposes under the United States-Canada Income Tax Treaty (Treaty). Those electing immigrants will obtain a new tax basis in their property equal to the fair market value in the “deemed sale” for Canadian tax purposes. The rule applies to Canadian residents immigrating after March 28, 2010.

Qualifying elections may be made by U.S. citizens or non-U.S. citizens owning U.S. real estate or U.S. personal property that constitutes part of a U.S. permanent business establishment, and property with respect to which gain would be taxable by the U.S. under a saving clause of the Treaty, if sold by a U.S. citizen or resident.

Non-U.S. Canadian citizens who own non-U.S. property may at the time of immigration from Canada be treated as having sold and repurchased their property immediately before immigrating to the United States. The basis of the property is stepped up for U.S. federal income tax purposes.

Canadians who immigrated after September 17, 2000 and before March 29, 2010, who sold or otherwise disposed of their property after immigrating from Canada, may make an election to be treated as having made a “deemed election”, if the statute of limitations has not closed in the U.S. for amending their respective tax returns. Under this procedure, the Canadian would report the deemed disposition gain and offsetting foreign tax credit, and request a refund of U.S. taxes paid.

Non-U.S. citizens, who own non-U.S. property and acquire U.S. tax residency after September 17, 2000, can make an election to treat property as having been sold and reacquired at fair market value on the deemed disposition date. The retroactive election must be made on the individual’s U.S. tax return filed after March 29, 2010, and amended for tax years filed for the affected tax years.

Canadian residents owning multiple property at the time of immigration may make the election consistently for all properties and the “deemed disposition” must result in a net gain for Canadian tax purposes. No election is permitted if the deemed disposition of the properties results in a net loss for Canadian tax purposes.

An election for relief under the Treaty is irrevocable unless revoked with the permission of the Internal Revenue Service. In order to make an election the party must file U.S. federal income tax return to report the gain or loss from a deemed sale of the property at the time of immigration from Canada; attach IRS form 8833 disclosing the election; and provide documentation noting the fair market value of the property at the time Canada imposed the departure tax and proof that the departure tax was paid.