

**Internal Revenue Service**

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

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PLR-152234-10

Date:

March 07, 2011

TY:

Legend

A =

B =

Company 1 =

Company 2 =

Company 3 =

Tax Years =

Year 1 =

Year 2 =

Year 3 =

Dear \_\_\_\_\_ :

This is in reply to a letter dated December 20, 2010, requesting an extension of time under Treas. Reg. § 301.9100-3 for A to elect the provisions of Rev. Proc. 2002-23, 2002-1 C.B. 744, for Tax Years.

The rulings contained in this letter are based upon information and representations submitted by the taxpayers and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the requested rulings, it is subject to verification on examination. The information submitted for consideration is substantially as set forth below.

#### FACTS

A and B became U.S. residents in Year 1 and lawful permanent residents in Year 2. Prior to becoming U.S. residents, A and B were residents of Canada. While residents of Canada, A established Canadian Registered Retirement Savings Plans (RRSPs) with Company 1 and Company 2 and a Deferred Profit Sharing Plan (DPSP) with Company 2, while B established two RRSPs with Company 1.

Recently, A and B engaged the services of Company 3 to prepare their return for Year 3. Company 3 reviewed A's and B's prior returns and discovered that A's and B's previous return preparers had never advised them of the need to make elections under Article XVIII(7) of the United States – Canada Income Tax Convention (the Treaty) to defer U.S. tax on income accrued in their RRSPs and DPSP. After Company 3 notified A and B of the need to make elections to benefit from the Treaty, A and B immediately took action to make a request under Treas. Reg. § 301.9100-3 for an extension of time to make Treaty elections pursuant to Rev. Proc. 2002-23.

As of the date of this ruling request, the Internal Revenue Service has not communicated with A or B in any way regarding their RRSPs and A's DPSP.

#### RULINGS REQUESTED

A requests the consent of the Commissioner of the Internal Revenue Service for an extension of time under Treas. Reg. § 301.9100-3 to make an election for Tax Years pursuant to Rev. Proc. 2002-23 to defer U.S. federal income taxation on income accrued in his RRSPs and DPSP. B requests the same relief with respect to her RRSPs.

#### LAW AND ANALYSIS

Treas. Reg. § 301.9100-1(c) provides that the Commissioner has discretion to grant a taxpayer a reasonable extension of time, under the rules set forth in Treas. Reg. § 301.9100-3, to make a regulatory election under all subtitles of the Internal Revenue Code, except subtitles E, G, H, and I.

Treas. Reg. § 301.9100 -1(b) provides that an election includes an application for relief in respect of tax, and defines a regulatory election as an election whose due date is prescribed by a regulation, a revenue ruling, revenue procedure, notice, or announcement.

Treas. Reg. § 301.9100-3(a) provides that requests for relief subject to this section will be granted when the taxpayer provides the evidence (including affidavits described in Treas. Reg. § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

In the present situation, the election provided in Rev. Proc. 2002-23 is a regulatory election within the meaning of Treas. Reg. § 301.9100-1(b). Therefore, the Commissioner has discretionary authority under Treas. Reg. § 301.9100-1(c) to grant A and B an extension of time, provided that A and B satisfy the standards set forth in Treas. Reg. § 301.9100-3(a).

Based solely on the information submitted and representations made, we conclude that A and B satisfy the standards of Treas. Reg. § 301.9100-3. Accordingly, A and B are granted an extension of time until 60 days from the date of this ruling letter to elect the provisions of Rev. Proc. 2002-23 for Tax Years. As provided in Treas. Reg. § 301.9100-1(a), the granting of an extension of time is not a determination that A and B are otherwise eligible to make the above-described election.

Pursuant to section 4.07 of Rev. Proc. 2002-23, the elections once made cannot be revoked except with the consent of the Commissioner. For Tax Years, and all subsequent tax years until the tax year in which a final distribution is made from each RRSP and DPSP, A and B must file Form 8891 for each RRSP and DPSP for which an election is made and from which a final distribution has not been made.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

A copy of this letter must be attached to A's and B's U.S. income tax return for the year in which A and B obtained the rulings and should be associated with A and B's amended returns for Tax Years.

This letter ruling is directed only to the taxpayers who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter will be sent to your authorized representatives.

Sincerely,

---

M. Grace Fleeman  
Senior Technical Reviewer, Branch 1  
Office of Associate Chief Counsel  
(International)

Enclosure:  
Copy for 6110 purposes