

**Internal Revenue Service**

Department of the Treasury

Washington, DC 20224

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Date: February 14, 2012

TY:

Legend

Taxpayer =

Spouse =

RRSP 1 =

RRSP 2 =

Tax Years =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Dear :

This is in reply to a letter dated June 22, 2011, requesting an extension of time under Treas. Reg. § 301.9100-3 for Taxpayer and Spouse to elect the provisions of Rev. Proc. 2002-23, 2002-1 C.B. 744, for Tax Years.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer 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

Taxpayer and Spouse became residents of the United States in Year 1. Before becoming U.S. residents, Taxpayer and Spouse, each of whom is a Canadian citizen, lived and worked in Canada where they each established a Canadian Registered Retirement Savings Plan (RRSP), RRSP 1 and RRSP 2, respectively.

Prior to moving to the United States, Taxpayer obtained a written summary of his and Spouse's tax and financial matters from their Canadian tax accountant, which included a brief description of their RRSPs.

After moving to the United States, Taxpayer and Spouse engaged a U.S. accountant to prepare their income tax returns for Year 1 and all subsequent tax years since Year 1. Taxpayer and Spouse provided all relevant tax and financial information to their U.S. accountant, including the written summary of their tax and financial matters that Taxpayer had obtained from their Canadian accountant. Taxpayer and Spouse do not recall any discussion with their U.S. accountant of the requirement to make an election to defer U.S. taxation on income accruing in RRSP 1 and RRSP 2 pursuant to Article XVIII(7) of the United States-Canada Income Tax Convention ("the Treaty").

The U.S. accountant prepared Taxpayer and Spouse's returns for Tax Years. Each year, Taxpayer and Spouse provided all relevant documents to the accountant, including statements pertaining to the RRSP accounts. The U.S. accountant did not prepare the necessary elections to defer U.S. tax on income accruing in RRSP 1 or RRSP 2.

In Year 2, Taxpayer received a distribution from RRSP 1 and provided his and Spouse's accountant with relevant documentation showing a distribution to Taxpayer from RRSP 1. The accountant failed to include the distribution from RRSP 1 on Taxpayer and Spouse's income tax return for Year 2. In Year 3, in the course of providing information relevant to the preparation of their Year 4 return, Taxpayer and Spouse again provided the accountant with the information about the Year 2 distribution to Taxpayer from RRSP 1. The U.S. accountant then realized that the distribution had not been reported on the Year 2 return and that the Year 2 return would need to be amended. While

reviewing the file to prepare an amended Year 2 return, it was discovered that no elections had been made under the Treaty with respect to Taxpayer's and Spouse's RRSPs.

As of the date of the ruling request, the Internal Revenue Service has not communicated with Taxpayer or Spouse in any way regarding their RRSPs.

#### RULING REQUESTED

Taxpayer and Spouse request 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 pursuant to Rev. Proc. 2002-23 to defer U.S. federal income taxation on income accrued in their RRSPs, as provided for in Article XVIII(7) of the Treaty for Tax Years .

#### 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 Taxpayer and Spouse an extension of time, provided that Taxpayer and Spouse satisfy the standards set forth in Treas. Reg. § 301.9100-3(a).

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

determination that Taxpayer and Spouse are otherwise eligible to make the above-described election.

Pursuant to section 4.07 of Rev. Proc. 2002-23, the election once made cannot be revoked except with the consent of the Commissioner. For Tax Years, Taxpayer and Spouse must file amended U.S. income tax returns to which they attach Forms 8891 (U.S. Information Return for Beneficiaries of Certain Canadian Registered Retirement Plans) for each RRSP. For each subsequent tax year through the tax year in which a final distribution is made from each RRSP, Taxpayer and Spouse must attach a Form 8891 for each RRSP from which a final distribution has not been made to their U.S. income tax return.

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 Taxpayer and Spouse's U.S. income tax return for the year in which Taxpayer and Spouse obtained the ruling and should be associated with Taxpayer and Spouse'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