

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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TY:

Legend

Taxpayer =

Financial Institution =

RRSP =

Tax Years =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Year 5 =

Date A =

Tax Preparer 1 =

Tax Preparer 2 =

Tax Preparer 3 =

Dear

This is in reply to a letter dated Date A requesting an extension of time under Treas. Reg. § 301.9100-3 for Taxpayer 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 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 is, and always has been, a U.S. citizen. In Year 1, Taxpayer moved from the United States to Canada to seek employment. Taxpayer lived and worked in Canada until Year 3, when he moved back to the United States.

Taxpayer established a Canadian Registered Retirement Savings Plan (RRSP) with Financial Institution while he was employed and living in Canada; taxpayer made annual contributions to the RRSP during this period. After moving back to the United States in Year 3, Taxpayer ceased making annual contributions to the RRSP, although Taxpayer continued to maintain the RRSP with Financial Institution. At all times relevant to this ruling request, Taxpayer deferred recognition of the accrued earnings in the RRSP for U.S. income tax purposes. Taxpayer has never withdrawn any funds nor received any distributions from the RRSP.

Taxpayer hired Tax Preparer 3, a U.S. accounting firm, to prepare his U.S. income tax returns commencing with Taxpayer's Year 5 income tax return. During its review of Taxpayer's U.S. income tax filings for the years preceding Year 5, Tax Preparer 3 discovered that Form 8891, "U.S. Information Return for Beneficiaries of Certain Registered Retirement Plans," was not present with any of Taxpayer's tax filings for these years. During this review, Tax Preparer 3 also discovered that, for the years prior to the year that Form 8891 was created by the Internal Revenue Service, Taxpayer's tax filings did not include a statement that Taxpayer was electing to defer current U.S. income taxation on earnings in the RRSP pursuant to Article XVIII(7) or Article XXIX(5) of the U.S.-Canada Income Tax Treaty (Treaty).

Taxpayer relied upon Tax Preparer 1, a firm of Canadian chartered accountants, to prepare his Canadian and U.S. income tax returns for Year 1 through Year 2. Following his return to the United States, Taxpayer hired Tax Preparer 2, a U.S. accounting firm, to prepare his U.S. income tax returns for Year 3 through Year 4. Neither Tax Preparer 1 nor Tax Preparer 2 informed Taxpayer that he should elect to defer current U.S.

income taxation on earnings in the RRSP pursuant to the Treaty. Tax Preparer 2 also did not advise Taxpayer to file Form 8891.

Taxpayer only became aware of Form 8891 and the Treaty election to defer current U.S. income taxation on the earnings of the RRSP following his hiring of Return Preparer 3. Taxpayer states that the Internal Revenue Service has not communicated with him concerning the RRSP or the lack of an election made on a statement attached to Taxpayer's prior returns or on Form 8891.

RULING REQUESTED

Taxpayer 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 pursuant to Rev. Proc. 2002-23, to defer U.S. federal income taxation on income accrued in his RRSP, 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 an extension of time, provided that Taxpayer satisfies the standards set forth in Treas. Reg. § 301.9100-3(a).

Based solely on the information submitted and representations made, we conclude that Taxpayer satisfies the standards of Treas. Reg. § 301.9100-3. Accordingly, Taxpayer is 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 is 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 must file amended U.S. income tax returns to which he attaches Forms 8891 (U.S. Information Return for Beneficiaries of Certain Canadian Registered Retirement Plans) for RRSP. For each subsequent tax year through the tax year in which a final distribution is made from RRSP, Taxpayer must attach a Form 8891 for RRSP to his 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's U.S. income tax return for the year in which Taxpayer obtained the ruling and should be associated with Taxpayer's amended returns for Tax Years.

This letter ruling is directed only to the taxpayer 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,

Craig R. Gilbert
Special Counsel to the Deputy Associate Chief
Counsel (International Field Service and Litigation)
Office of Associate Chief Counsel (International)

Enclosure:
Copy for 6110 purposes

cc: