

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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March 01, 2012

TY:

Legend

Taxpayer =

Spouse =

RRSP 1 =

RRSP 2 =

RRSP 3 =

RRSP 4 =

Accounting Firm =

Tax Years =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Year 5 =

Year 6 =

Year 7 =

Year 8 =

Dear :

This is in reply to a letter dated August 29, 2011, as amended by supplemental information dated February 20, 2012, 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 taxpayers and accompanied by a penalty of perjury statement executed by the appropriate parties. 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 each established Canadian Registered Retirement Savings Plans (RRSPs) before becoming U.S. residents in Year 1 and Year 2 respectively. Taxpayer established RRSP 1, RRSP 2, and RRSP 3, and Spouse established RRSP 4. In Year 3, RRSP 2 was closed and the entire account balanced was rolled over into new RRSP 3. Since becoming U.S. residents, Taxpayer and Spouse have prepared their own federal income tax returns. They believed their tax filing situation was very simple. They did not receive tax advice and/or counsel from an accounting firm prior to Year 7 with respect to their RRSP accounts, as they believed they had prepared their income tax returns correctly and that the RRSP accounts required no additional reporting.

In Year 7, after hearing something in the media about foreign financial account reporting, Spouse called the Internal Revenue Service to confirm that she and Taxpayer had been properly reporting their Canadian RRSP accounts. During that discussion, Spouse was advised by an IRS representative that Form 8891 (U.S. Information Return for Beneficiaries of Certain Canadian Registered Retirement Plans) must be filed in order to defer U.S. income taxation on income accruing in, but not distributed from, an RRSP. At that point, Taxpayer and Spouse amended their Form 1040 returns for Year 4, Year 5, and Year 6 to include Forms 8891 for each of those years.

Shortly thereafter, Spouse contacted Accounting Firm because of her concerns regarding the correctness of the amended returns, and to make certain that she and Taxpayer were in full compliance with U.S. tax law. Accounting Firm then confirmed what the IRS representative had told her regarding the need to make an election to defer U.S. taxation on income accruing in their RRSP accounts pursuant to Article XVIII(7) of the United States-Canada Income Tax Convention (“the Treaty”) and Rev. Proc. 2002-23, and Taxpayer and Spouse took immediate action to request an extension of time to file a late election.

As of Year 8, Taxpayer and Spouse have not received any distributions from their RRSPs. Taxpayer and Spouse represent that the Internal Revenue Service has not corresponded with them 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 elections 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 Form 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 Chief Counsel (International))

Enclosure:
Copy for 6110 purposes

cc: