

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

Number: **201224015**  
Release Date: 6/15/2012

Third Party Communication: None  
Date of Communication: Not Applicable  
Person To Contact:

Index Number: 9100.22-00, 9114.03-06

, ID No.  
Telephone Number:

Refer Reply To:  
CC:INTL:B01  
PLR-138180-11  
Date:  
March 13, 2012

TY:

Legend

Taxpayer =

Spouse =

RRSP 1 =

RRSP 2 =

Accounting Firm 1 =

Accounting Firm 2 =

Accounting Firm 3 =

Tax Year =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Year 5 =

Dear :

This is in reply to a letter dated August 29, 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 Year.

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 the appropriate parties. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination. The information submitted for consideration is substantially as set forth below.

#### FACTS

Taxpayer and Spouse each have two Canadian Registered Retirement Savings Plans (RRSPs). Prior to Year 1, Spouse opened two RRSP accounts and filed U.S. federal income tax returns with an attached Form 8833 claiming treaty benefits under Article XVIII(7) of the U.S.-Canada income tax treaty (the "Treaty"). In Year 2, Taxpayer opened two RRSP accounts, RRSP 1 and RRSP 2, using funds from his former employer's pension plan.

In Year 2, Taxpayer and Spouse engaged Accounting Firm 1 to prepare their U.S. and Canadian individual income tax returns and relied on Accounting Firm 1 to prepare these returns correctly. In Year 2, Taxpayer provided information with respect to RRSP 2 to Accounting Firm 1, not realizing that he did not provide information with respect to RRSP 1. Accounting Firm 1 prepared Form 8891 for RRSP 2 making an election to defer U.S. income tax on income accruing in RRSP 2 pursuant to Article XVIII(7) of the Treaty. However, Accounting Firm 1 did not make such election for RRSP 1, believing that RRSP 2 was the only RRSP account owned by Taxpayer during Year 2. During preparation of Taxpayer's and Spouse's Year 3 income tax returns, Accounting Firm 1 discovered that the Taxpayer had two RRSP accounts, and prepared the Year 3 Form 8891 for both RRSP 1 and RRSP 2.

For Year 3 through Year 4, Taxpayer filed Forms 8891 for both RRSP 1 and RRSP 2.

In Year 5, during a detailed review of Taxpayer's and Spouse's accounts, Accounting Firm 2 discovered the failure to make the Year 2 election to defer U.S. income tax on income accruing in RRSP 1. Accounting Firm 2 consulted with Accounting Firm 3 regarding this matter and discovered that a Private Letter Ruling could be requested to correct the failure to make a timely election under Article XVIII(7). Taxpayer and

Spouse immediately engaged Accounting Firm 3 to prepare the request for an extension of time to file a late election under Treas. Reg. § 301.9100-3.

As of Year 5, 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 RRSP 1, as provided for in Article XVIII(7) of the Treaty for Tax Year.

#### 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 is granted an extension of time until 60 days from the date of this ruling letter to make an election for Tax Year 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 Year, Taxpayer and Spouse must file an amended U.S. income tax return to which they attach Form 8891 (U.S. Information Return for Beneficiaries of Certain Canadian Registered Retirement Plans) for RRSP 1. For each subsequent tax year through the tax year in which a final distribution is made from RRSP 1, Taxpayer and Spouse must attach a Form 8891 for RRSP 1 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  
(International)

cc: