

In Year 1, Taxpayer established a Canadian Registered Retirement Savings Plan (“RRSP”) prior to becoming a U.S. resident. Taxpayer became a U.S. resident in Year 2. Taxpayer has not contributed any money to the RRSP since Year 3 and has not withdrawn any money from the RRSP since becoming a U.S. resident. The trustee of RRSP is Financial Institution and the market value of RRSP as of the date of the ruling request is Current Value.

Taxpayer was not aware of the need to make an election pursuant to paragraph 7 of Article XVIII of the United States – Canada Income Tax Treaty on Form 8891 in order to defer U.S. tax on income accrued in the RRSP. In Month A, Taxpayer read a news article that dealt with IRS rules about Canadian RRSP accounts, did further research on the rules, and sought professional advice.

RULING REQUESTED

Whether Taxpayer may receive 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.

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 a Form 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 the 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.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

M. Grace Fleeman
Senior Technical Reviewer, Branch 1
(International)

Enclosure (1)
Copy for 6110 purposes