

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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TY:

Legend

Taxpayer A =

Taxpayer B =

Financial Institution M =

Financial Institution N =

RRSP 1 =

RRSP 2 =

RRSP 3 =

Tax Years =

Year 1 =
Year 2 =
Year 3 =
Year 4 =
Date A =
Date B =
Tax Preparer 1 =

Dear

This is in reply to a letter dated Date A requesting an extension of time under Treas. Reg. § 301.9100-3 for Taxpayer A and Taxpayer B (collectively, "Taxpayers") to elect the provisions of Rev. Proc. 2002-23, 2002-1 C.B. 744, for Tax Years. Additional information was submitted by Taxpayers in a letter dated Date B.

The ruling contained in this letter is based upon information and representations submitted by Taxpayers 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 ruling, it is subject to verification on examination. The information submitted for consideration is substantially as set forth below.

FACTS

Taxpayer A established Canadian Registered Retirement Savings Plans with Financial Institution M (RSSP 1) and Financial Institution N (RRSP 2 and RRSP 3) (collectively, the RRSPs) during the period between Year 1 and Year 2 and prior to becoming a U.S. tax resident. Taxpayer A made annual contributions to the RRSPs during this period. After becoming a U.S. tax resident in Year 2, Taxpayer A ceased making annual contributions to the RRSPs, although Taxpayer A continued to maintain the RRSPs with Financial Institutions M and N.

Taxpayer A is married to Taxpayer B; they file a joint U.S. income tax return. Taxpayer B has not established any RRSPs and has never contributed to Taxpayer A's RRSPs. At all times relevant to this ruling request, recognition of the accrued earnings in the

RRSPs has been deferred for U.S. income tax purposes. Taxpayer A has never withdrawn any funds nor received any distributions from the RRSPs.

Prior to Taxpayer A becoming a U.S. tax resident, the investment advisor for RRSP 1 discussed with her the investment choice restrictions arising under U.S. securities laws and resulting from her planned U.S. residency. The investment advisor did not discuss U.S. tax issues associated with RRSP 1 resulting from Taxpayer A's planned U.S. residency.

Taxpayer A also discussed the pending move to the United States with a friend who practiced U.S. tax with a large international public accounting firm in Canada. Taxpayer A was not told there would be U.S. tax issues associated with her RRSPs.

Taxpayer A's first U.S. income tax return was a joint income tax return filed with Taxpayer B for Year 3. This return was prepared by Tax Preparer 1, who did not advise the Taxpayers they should elect to defer current U.S. income taxation on earnings in the RRSPs pursuant to Article XVIII(7) of the U.S.-Canada Income Tax Treaty (Treaty).

Taxpayers prepared their U.S. income tax returns for Tax Years using a commercially available tax preparation software program. The program did not guide Taxpayers to Form 8891, "U.S. Information Return for Beneficiaries of Certain Registered Retirement Plans," to defer current U.S. income taxation on earnings in the RRSPs pursuant to the Treaty for Tax Years.

Taxpayers only became aware in Year 4 of Form 8891 and the Treaty election to defer current U.S. income taxation on earnings in the RRSPs following the receipt of an e-mail from the American Institute of Certified Public Accountants that set out new rules on reporting employer and personal foreign assets. Taxpayers state that the Internal Revenue Service has not communicated with them concerning the RRSPs or the lack of an election made on Form 8891. The Taxpayers are not participants in the Internal Revenue Service's offshore voluntary compliance initiatives.

RULING REQUESTED

Taxpayers 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 Taxpayer A's 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 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 Taxpayers satisfy the standards of Treas. Reg. § 301.9100-3. Accordingly, Taxpayers 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 Taxpayers 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, Taxpayers must file amended U.S. income tax returns to which they attach a separate Form 8891 for each RRSP owned by Taxpayer A. For each subsequent tax year, Taxpayers must attach a separate Form 8891 to their U.S. income tax return for each RRSP owned by Taxpayer A from which a final distribution has not been made.

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 Taxpayers' U.S. income tax return for the year in which Taxpayers obtained the ruling and should be associated with Taxpayers' 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 representative.

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: