

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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May 16, 2012

TY:

Legend

Taxpayer A =

Taxpayer B =

Financial Institution =

RRSP 1 =

RRSP 2 =

Tax Years 1-6 =

Tax Year 1 =

Tax Years 2-4 =

Tax Years 5-6 =

Year 1 =
Year 2 =
Date A =
Date B =
Date C =
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 A and Taxpayer B (collectively, "Taxpayers") to elect the provisions of Rev. Proc. 2002-23, 2002-1 C.B. 744, with respect to Tax Years. Additional information was submitted by Taxpayers in letters dated Date B and Date C.

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 and B are married and filed joint Federal income tax returns for Tax Years. Taxpayer A is a Canadian citizen and also a United States permanent resident. Taxpayer B holds dual United States and Canadian citizenship.

Taxpayers lived in Canada until Year 1 when they moved to the United States. While living and working in Canada, Taxpayer A and Taxpayer B each established and contributed to separate Canadian Registered Retirement Savings Plans (RRSPs) with Financial Institution, RRSP 1 (Taxpayer A) and RRSP 2 (Taxpayer B).

Taxpayer A ceased making annual contributions to RRSP 1 after moving to the United States in Year 1. Taxpayer B ceased making annual contributions to RRSP 2 several years before Taxpayers moved to the United States. Both Taxpayer A and Taxpayer B continued to maintain RRSP 1 and RRSP 2 with Financial Institution after moving to the United States. At all times relevant to this ruling request, recognition of the accrued earnings in RRSP 1 and RRSP 2 has been deferred for U.S. income tax purposes. Neither Taxpayer A nor Taxpayer B has withdrawn any funds or received any distributions from RRSP 1 or RRSP 2.

Taxpayer A prepared the joint income tax return he and Taxpayer B filed for Tax Year 1. Tax Preparer 1 prepared Taxpayers' joint income tax returns for Tax Years 2-4. Tax Preparer 2 prepared Taxpayers' joint income tax returns for Tax Years 5-6.

Taxpayer A was not aware that he and Taxpayer B should elect to defer current U.S. income taxation on the earnings in RRSP 1 and RRSP 2 pursuant to Article XVIII(7) of the U.S.-Canada Income Tax Treaty (Treaty) when he prepared the Tax Year 1 return. Neither Tax Preparer 1 nor Tax Preparer 2 advised Taxpayers they should elect to defer current U.S. income taxation on earnings in RRSP 1 and RRSP 2 pursuant to the Treaty.

Taxpayers became aware of the need to file Form 8891, "U.S. Information Return for Beneficiaries of Certain Registered Retirement Plans," to defer current income taxation of the earnings in RRSP 1 and RRSP 2 pursuant to the Treaty only after Taxpayer B hired Tax Preparer 3 to prepare her Year 2 income tax return. As part of his review of Taxpayers' tax and financial records, Tax Preparer 3 determined that neither Taxpayer A nor Taxpayer B had ever elected to defer current U.S. income taxation of the accrued earnings in RRSP 1 or RRSP 2 pursuant to the Treaty. Taxpayers state that no return is currently under examination by the Internal Revenue Service, before Appeals, or before a Federal court.

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 RRSP 1 and RRSP 2, as provided for in Article XVIII(7) of the Treaty, for Tax Years 1-6.

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 A an extension of time, provided that Taxpayer A 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 1-6 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 1-6, Taxpayers must file an amended U.S. income tax return to which a Form 8891, for each RRSP, is attached. For each subsequent tax year, a Form 8891 for RRSP 1 and a Form 8891 for RRSP 2 must be attached to the appropriate U.S. income tax return through the year in which a final distribution is made from the respective RRSP.

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 or returns for the year in which Taxpayers obtained the ruling and should be associated with Taxpayers' amended returns for Tax Years 1-6.

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: