

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:INTL:B01  
PLR-104233-12

Date:  
June 15, 2012

TY:

Legend

Taxpayer =

RRSP =

Financial Institution =

Year 1 =

Years 2-5 =

Years 6-8 =

Date A =

Date B =

Tax Preparer 1 =

Tax Preparer 2 =

Tax Preparer 3 =

Tax Preparer 4 =

Tax Years =

Dear :

This is in reply to a letter dated January 25, 2012, and additional information submitted on May 15, 2012, requesting 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.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer 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 was a resident of Canada until Year 1, when she moved to the United States and became a resident of the United States. On Date A, while a resident of Canada, Taxpayer established a Canadian Registered Retirement Savings Plan (RRSP) with Financial Institution. Taxpayer has filed U.S. income tax returns for all Tax Years and all income tax returns for Tax Years were prepared by paid tax preparers. Taxpayer's Year 1 return was prepared by Tax Preparer 1, who did not advise Taxpayer that she needed to make an election pursuant to paragraph 7 of Article XVIII of the U.S. Canada income tax Treaty (the "Treaty") in order to defer U.S. tax on income accrued in her RRSP. Tax Preparer 2 prepared Taxpayer's U.S. income tax returns for Years 2-5 and failed to advise Taxpayer of the Article XVIII(7) election under the Treaty. Tax Preparer 3 prepared Taxpayer's U.S. income tax returns for Years 6-8 and also failed to advise Taxpayer of the Article XVIII(7) election under the Treaty.

During a review of Taxpayer's taxes on Date B, Tax Preparer 4 informed Taxpayer that earnings with respect to her RRSP were tax-deferred only if she had made a timely election under the procedures of Rev. Proc. 2002-23 and advised her to request a private letter ruling from the Internal Revenue Service.

As of the date of the ruling, Taxpayer has not withdrawn funds nor received distributions from RRSP. Taxpayer represents that the Internal Revenue Service has not previously corresponded with her regarding her RRSP, and that no return is currently under examination by the Internal Revenue Service, before Appeals, or before a Federal court.

RULING REQUESTED

Taxpayer requests 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 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 Taxpayer satisfies the standards of Treas. Reg. § 301.9100-3. Accordingly, Taxpayer 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 Taxpayer attaches 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 a final distribution is made from RRSP, Taxpayer must attach a Form 8891 for RRSP to Taxpayer's 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's U.S. income tax return for the year in which Taxpayer obtained the ruling and should be associated with Taxpayer's amended returns for Tax Years.

This letter ruling is directed only to the taxpayer 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)