

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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TY:

Legend

Taxpayer =

Spouse =

RRSP =

Institution =

Financial Institution =

Tax Preparer =

Tax Years =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Year 5 =

Years 5-11 =

Year 12 =

Dear

This is in reply to a letter dated January 13, 2012, and additional information dated May 8, 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 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 is a Canadian citizen who established a Canadian Registered Retirement Savings Plan (RRSP) in Year 1 that is currently held with Financial Institution. Taxpayer moved to the United States in Year 2 to attend school. Taxpayer lived in the United States on various visas until she acquired U.S. permanent residence in Year 3. In Year 5, Taxpayer rolled over the commuted value of a municipal pension account established with Institution to RRSP pursuant to the rules of Income Tax Act of Canada Section 60(j.1).

Taxpayer filed U.S. joint income tax returns with Spouse for Tax Years. For Year 4, Taxpayer and Spouse's joint income tax return was prepared by Tax Preparer, who did not advise Taxpayer of the need 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 RRSP. For Years 5-11, Taxpayer and Spouse's returns were self-prepared by Taxpayer and Spouse using tax preparation software. During this time, neither Taxpayer nor Spouse was aware of the need to make the Article XVIII(7) election under the Treaty.

In Year 12, Spouse read an article about the filing requirements for a U.S. person with an RRSP account and informed Taxpayer. Taxpayer and Spouse then contacted a tax professional who informed them of the need to request a private letter ruling granting Taxpayer an extension of time to make a late election under Article XVIII(7) of the Treaty with respect to RRSP.

As of the date of this ruling, Taxpayer has not received distributions from RRSP.

Taxpayer represents that the Internal Revenue Service has not previously corresponded with her regarding 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 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 and Spouse 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 and Spouse must attach a Form 8891 for RRSP 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 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 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)

Enclosures (1)