

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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LEGEND

Husband: =

Wife: =

RRSP =

RPP =

Country A =

Country B =

Employer =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Year 5 =

Year 6 =

Year 7 =

Year 8 =

Year 9 =

Year 10 =

Tax Years =

Dear :

This is in reply to a letter dated January 12, 2012, as amended by supplemental information dated April 10, 2012, requesting an extension of time under Treas. Reg. § 301.9100-3 for Husband and Wife (Taxpayers) 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 an appropriate party. 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.

#### FACTS

Wife was born in Country A. In Year 1, she moved to Canada. In Year 3, she began to contribute to RRSP. In Year 4, she became a Canadian citizen and began to work for Employer. She stopped contributing to RRSP in Year 4 and began to contribute to RPP, as required by Employer.

Husband was born in Country B. In Year 2, he moved to Canada to work for Employer. Husband began to contribute to RPP in Year 2. He became a Canadian citizen in Year 5.

Husband and Wife each contributed to RPP until they resigned their positions in Year 6. They elected to leave their funds in RPP as deferred pensions available only upon retirement. In Year 6, Husband moved to the United States, followed by Wife in Year 7. Taxpayers did not make any further contributions to RRSP or RPP. Taxpayers retired in Year 8 and began to receive payments from RPP, which they reported on their Forms 1040. There have been no distributions from RRSP. Taxpayers both became U.S. citizens in Year 9.

Taxpayers were not aware of the need to make an election pursuant to paragraph 7 of Article XVIII of the U.S.–Canada income tax treaty in order to defer U.S. tax on income accrued in RRSP and RPP until they read an article in a Canadian newspaper in late

Year 10 indicating that certain Canadian retirement vehicles might have filing requirements with the IRS. After reading the article, Taxpayers met with a local accountant, who recommended that they retain tax attorneys with experience in international issues.

Taxpayers state that the Internal Revenue Service has not communicated with them concerning RRSP or RPP or the lack of an election pursuant to Rev Proc. 2002-23.

#### RULING REQUESTED

Whether Taxpayers may receive an extension of time under Treas. Reg. § 301.9100-3 for Taxpayers 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 Taxpayers an extension of time, provided that Taxpayers satisfy 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 elections 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 Form 8891 (U.S. Information Return for Beneficiaries of Certain Canadian Registered Retirement Plans) for RRSP and copies of the statement described in section 4.01 of Rev. Proc. 2002-23 for each Taxpayer's interest in RPP. For each subsequent tax year through the tax year in which a final distribution is made from RRSP, Taxpayers must attach a Form 8891 for RRSP to their U.S. income tax return. For each subsequent tax year through the tax year in which Taxpayers have each received a final distribution from RPP, each Taxpayer who has not received a final distribution from RPP must attach a copy of the statement described in section 4.01 of Rev. Proc. 2002-23 for RPP 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.

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

In accordance with the Powers 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 CC:INTL:Br1  
Office of the Associate Chief Counsel  
(International)

cc: