

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201244013**
Release Date: 11/2/2012

Third Party Communication: None
Date of Communication: Not Applicable
Person To Contact:

Index Number: 9100.22-00, 9114.03-06

, ID No.
Telephone Number:

Refer Reply To:
CC:INTL:B01
PLR-150549-11
Date:
July 26, 2012

TY:

Legend

Taxpayer =

Spouse =

RRSP 1 =

RRSP 2 =

RRSP 3 =

RRSP 4 =

RRSP 5 =

RRSP 6 =

RRSP 7 =

Tax Preparer 1 =

Tax Preparer 2 =

Legal Counsel =

Year 1 =

Year 2-12 =

Years 13-18 =

Year 18 =

Tax Years =

Dear :

This is in reply to a letter dated December 1, 2011, and additional information provided on May 17, 2012, and June 28, 2012, requesting an extension of time under Treas. Reg. § 301.9100-3 for Taxpayer and Spouse (collectively, the "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 Taxpayers 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

Taxpayers are Canadian citizens and were Canadian residents until they became residents of the United States in Year 1. Prior to becoming U.S. residents, Taxpayers established several Canadian Registered Retirement Savings Plan ("RRSP") Accounts. Taxpayer established RRSP 1 and RRSP 2, and Spouse established RRSP 3, RRSP 4, RRSP 5, RRSP 6, and RRSP 7 (collectively, the "RRSPs"). All contributions to the RRSPs were made by the Taxpayers prior to Year 1, and Taxpayers have not received any distributions from their RRSPs.

Taxpayers relied on Tax Preparer 1 to prepare their U.S. income tax returns for Years 2-12, and Tax Preparer 2 to prepare their U.S. income tax returns for Years 13-18. Neither Tax Preparer 1 nor Tax Preparer 2 advised Taxpayers of the requirement to make an election under Article XVIII(7) of the U.S.-Canada income tax treaty (the "Treaty") to defer U.S. income tax on income accruing in their RRSPs.

In Year 18, Taxpayers sought legal advice regarding their RRSPs. In the course of reviewing the matter for Taxpayers, Legal Counsel discovered that Taxpayers had not made an election under Article XVIII(7) of the Treaty to defer U.S. income tax on income accruing in the RRSPs. Prior to being notified by Legal Counsel in Year 18, Taxpayers had been unaware of the requirement for the election. Immediately upon learning of the requirement to make an election, Taxpayers instructed Legal Counsel to prepare a letter ruling requesting relief for the late election.

Taxpayers represent that the Internal Revenue Service has not corresponded with them regarding their RRSPs.

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 the 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 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 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 Form 8891 (U.S. Information Return for Beneficiaries of Certain Canadian Registered Retirement Plans) for the RRSPs. For each subsequent tax year through the tax year in which a final distribution is made from each of the RRSPs, Taxpayers must attach a Form 8891 for each listed RRSP from which a final distribution has not been made 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 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 representatives.

Sincerely,

Quyen P. Huynh
Senior Counsel, Branch 1
(International)

Enclosure