

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Date:  
October 19, 2012

TY:

Legend

Taxpayer =

Spouse =

RRSP =

Tax Years =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Year 5 =

Year 6 =

Dear \_\_\_\_\_ :

This is in reply to a letter dated April 23, 2012, requesting an extension of time under Treas. Reg. § 301.9100-3 for Taxpayer and Spouse to elect the provisions of Rev. Proc. 2002-23, 2002-1 C.B. 744, for Tax Years.

The ruling contained in this letter is 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 requested rulings, it is subject to verification on examination. The information submitted for consideration is substantially as set forth below.

#### FACTS

During Tax Years, Taxpayer was a Canada citizen and U.S. resident. Taxpayer moved to the United States in Year 1 and became a lawful permanent resident shortly afterward. Spouse was born and raised in the United States. Taxpayer and Spouse married in Year 2. In Year 3, Taxpayer established a Canadian Registered Retirement Savings Plan (RRSP). Taxpayer made contributions to RRSP until Year 5.

Taxpayer and Spouse filed joint income tax returns throughout their marriage. Neither Taxpayer nor Spouse has tax-related education, skills, or training. In Year 4, they engaged a U.S. accountant to prepare their income tax returns. The U.S. accountant has prepared their income tax returns since Year 4. Each year, Taxpayer and Spouse provided their U.S. accountant with all the tax and financial information they believed was relevant. For Tax Years, the U.S. accountant did not advise Taxpayer and Spouse of the requirement to make an election to defer U.S. taxation on income accruing in RRSP pursuant to Article XVIII(7) of the United States-Canada Income Tax Convention ("the Treaty").

Taxpayer died in Year 6. While settling Taxpayer's affairs, Spouse discovered that they were not compliant with U.S. tax law with respect to RRSP.

As of the date of the ruling request, the Internal Revenue Service has not communicated with Taxpayer or Spouse in any way regarding the RRSP.

#### RULING REQUESTED

Taxpayer and Spouse request the consent of the Commissioner of Internal Revenue 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 and Spouse an extension of time, provided that Taxpayer and Spouse satisfy the standards set forth in Treas. Reg. § 301.9100-3(a).

Based solely on the information submitted and representations made, we conclude that Taxpayer and Spouse satisfy the standards of Treas. Reg. § 301.9100-3. Accordingly, Taxpayer and Spouse 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 Taxpayer and Spouse 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, amended U.S. income tax returns should be filed, with a Form 8891 (U.S. Information Return for Beneficiaries of Certain Canadian Registered Retirement Plans) for the RRSP attached to each amended return. For each subsequent tax year through the tax year in which a final distribution is made from the RRSP, Spouse must attach a Form 8891 for the RRSP to Spouse'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 the U.S. income tax return for the year in which Taxpayer and Spouse obtained the ruling and should be associated with the 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 representative.

Sincerely,

---

M. Grace Fleeman  
Senior Technical Reviewer, Branch 1  
Office of Associate Chief Counsel  
(International)

Enclosure:  
Copy for 6110 purposes

cc: