

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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November 16, 2012

TY:

Legend

Taxpayer =

Financial Institution 1 =

Financial Institution 2 =

RRSP 1 =

RRSP 2 =

RRSP 3 =

Tax Years =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Year 5 =

Year 6 =

Year 7 =

Year 8 =

Dear :

This is in reply to a letter dated May 10, 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, with respect to Tax Years. Additional information was submitted in a letter dated July 19, 2012.

The ruling contained in this letter is based upon information and representations submitted by 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 ruling, it is subject to verification on examination. The information submitted for consideration is substantially as set forth below.

#### FACTS

Taxpayer became a U.S. resident in Year 1. Prior to becoming a U.S. resident, Taxpayer established three Canadian Registered Retirement Savings Plans (RRSPs). RRSP 1 and RRSP 2 were established with Financial Institution 1, and RRSP 3 was established with Financial Institution 2.

During Tax Years, Taxpayer and her husband filed joint returns. Taxpayer and her husband relied on U.S. accountants to prepare their timely filed joint Federal income tax returns for Year 1 to Year 2, as well as Year 4 and Year 7. Taxpayer prepared her timely filed joint Federal income tax returns for Year 3 and Year 5 to Year 6. During the years when Taxpayer engaged U.S. accountants to prepare Taxpayer's returns, Taxpayer was not advised of the need to make an election to defer current U.S. income taxation on earnings in RRSP 1, RRSP 2, and RRSP 3 pursuant to Article XVIII(7) of the U.S.-Canada Income Tax Treaty (Treaty) for Tax Years. Taxpayer relied on such advice and, when preparing Taxpayer's own returns, did not know that the election needed to be made.

In Year 8, Taxpayer first became aware of the need to make an election to benefit from the Treaty and she took action to request an extension of time to file an election under Treas. Reg. §301-9100-3. The Internal Revenue Service has not communicated with Taxpayer concerning the RRSPs.

## 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 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 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 under Rev. Proc. 2002-23 for RRSP 1, RRSP 2, and RRSP 3 for Tax Years. 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 Forms 8891 for RRSP 1, RRSP 2, and RRSP 3 are attached. Taxpayer must attach a Form 8891 for each RRSP to

Taxpayer's U.S. income tax return for each subsequent tax year through the year in which a final distribution is made from the respective RRSP.

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 representative.

Sincerely,

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Quyen P. Huynh  
Senior Counsel, Branch 1  
Office of Associate Chief Counsel (International)

Enclosure:  
Copy for 6110 purposes

cc: