

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:INTL:B01

PLR-137940-12

Date:

May 22, 2013

TY:

Legend

Taxpayer =

Spouse =

RRSP =

Tax Preparer 1 =

Tax Preparer 2 =

Tax Years =

Year 1 =

Year 2 =

Year 3 =

Dear _____ :

This responds to your letter dated June 30, 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 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 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 RRSP in year 1. In year 2, Taxpayer moved to the U.S. Taxpayer has not received any distributions from RRSP. During Tax Years, Taxpayer and Spouse were subject to U.S. income tax as U.S. residents, and they jointly filed Forms 1040 on a timely basis.

Neither Taxpayer nor Spouse has tax-related education, skills, or training. During Tax Years, Taxpayer and Spouse engaged Tax Preparer 1 to prepare their U.S. income tax returns. Tax Preparer 1 did not notify Taxpayer of the requirement to make an election under Article XVIII(7) of the United States-Canada Income Tax Convention (“the Treaty”) to defer recognition of undistributed income accrued by RRSP. Accordingly, Taxpayer was unaware that such an election was required.

In Year 3, Taxpayer and Spouse engaged Tax Preparer 2 to prepare their U.S. income tax returns. While evaluating Taxpayer and Spouse’s Year 3 U.S. income tax obligations, Tax Preparer 2 discovered that Taxpayer and Spouse 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 in any way regarding RRSP.

RULING REQUESTED

Taxpayer requests 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, 2002-1 C.B. 744 to defer U.S. federal income taxation on income accrued by RRSP during Tax Years, as provided for by Article XVIII(7) of the Treaty.

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, 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 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, once the election is made it cannot be revoked, except with the consent of the Commissioner. For open Tax Years, Taxpayer and Spouse must file amended U.S. income tax returns and attach 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 the U.S. income tax return for the year in which Taxpayer obtained the ruling and should be associated with the amended returns for open 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,

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

Enclosure:
Copy for 6110 purposes