

**Internal Revenue Service**

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Department of the Treasury  
Washington, DC 20224

Third Party Communication: None  
Date of Communication: Not Applicable

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CC:INTL:B01  
PLR-136731-11

Date:  
May 31, 2013

TY:

Legend

Taxpayer =

RRSP =

LIRA =

Tax Years =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Year 5 =

Year 6 =

Year 7 =

Year 8 =

Tax Preparer =

Dear

This is in reply to a letter dated \_\_\_\_\_, and additional information submitted \_\_\_\_\_, 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.

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 is a Canadian citizen who became a permanent resident of the United States in Year 1. While in Canada, Taxpayer established and contributed to a Canadian Registered Retirement Savings Plan (RRSP) and a Locked-In Retirement Account (LIRA), or Locked-in RRSP. Taxpayer's LIRA holds funds transferred from a Canadian registered pension plan.

After immigrating to the United States, Taxpayer continued to maintain her RRSP and LIRA, but has not contributed to either account since moving to the U.S. In Years 2, 3, 5, 6, and 7, Taxpayer caused amounts to be distributed from her RRSP. Taxpayer represents that she paid all Canadian taxes assessed on those distributions, reported those distributions on her U.S. joint income tax returns, and claimed foreign tax credits with respect to the Canadian taxes paid. Taxpayer represents that she has not received any distributions from her LIRA.

Taxpayer represents that she and her husband have timely filed U.S. joint income tax returns for Tax Years. For Years 2 and 3, Taxpayer's returns were prepared by Tax Preparer, who did not advise Taxpayer to elect to defer current U.S. income taxation on the accrued earnings in her RRSP and LIRA pursuant to Article XVIII(7) of the U.S.-Canada Income Tax Treaty (Treaty). Taxpayer did not report the accrued earnings in her RRSP or her LIRA on those returns.

For Years 4, 5, 6, and 7, Taxpayer prepared her U.S. joint income tax returns using commercially available tax preparation software. Taxpayer represents that she was unaware of the need to make the election under Article XVIII(7) of the Treaty to defer

current U.S. taxation on the accrued earnings in her RRSP and LIRA. Taxpayer did not report the accrued earnings in her RRSP or her LIRA on her Year 4, 5, 6, or 7 returns. In Year 8, Taxpayer learned of the obligation to file Form TD F 90-22.1, "Report of Foreign Bank and Financial Accounts (FBAR)," with respect to her RRSP and her LIRA. After hiring a professional tax advisor, Taxpayer also became aware of the need to elect to defer current U.S. income taxation on the undistributed earnings in her RRSP and her LIRA pursuant to Article XVIII(7) of the Treaty and to file Form 8891.

As of the date of this ruling request, Taxpayer represents that the Internal Revenue Service had not communicated with Taxpayer regarding her RRSP or her LIRA.

#### 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 RRSP and her LIRA, 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 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 the RRSP and the LIRA 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 open Tax Years, Taxpayer must file amended U.S. income tax returns to which Forms 8891 for the RRSP and LIRA are attached. For each subsequent tax year through the year in which a final distribution is made from Taxpayer's RRSP or LIRA, Taxpayer must attach a Form 8891 for each respective account to her 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 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 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 representatives.

Sincerely,

Elizabeth U. Karzon  
Chief, Branch 1  
Office of Associate Chief Counsel  
(International)

Enclosure:  
Copy for 6110 purposes

cc: