

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

[Third Party Communication:

Date of Communication: Month DD, YYYY]

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:INTL:BR1

PLR-123591-12

Date:

May 29, 2013

### Legend

Tax Years =

Husband =

Wife =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Year 5 =

RRSP1 =

LIRA 1 =

RRSP2 =

LIRA 2 =

RRSP3 =

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

This is in reply to your letter dated May 10, 2012, supplemented by your letter dated November 27, 2012, requesting an extension of time under Treas. Reg. § 301.9100-3 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 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 request for rulings, it is subject to verification on examination.

#### FACTS:

In Year 1, while residents of Canada, Husband established RRSP1 and LIRA1, and Wife established RRSP2, RRSP3 and LIRA2. In Year 2, Husband and Wife moved to the United States. In Year 3, Husband and Wife became lawful permanent residents of the United States. Husband and Wife represent that they have timely filed all required U.S. income tax returns.

Husband and Wife have relied on the same tax return preparer for their U.S. income tax returns. In Year 5, Husband and Wife and their tax return preparer became aware of the requirement to make an election to defer recognition of undistributed earnings in the Canadian retirement accounts pursuant to Article XVIII(7) of the U.S.–Canada income tax treaty (the “Treaty”). Husband and Wife immediately sought legal advice and requested the consent of the Commissioner of the Internal Revenue Service for an extension of time to make the election to defer U.S. income tax on income accrued in their Canadian retirement accounts.

Husband and Wife represent that the Internal Revenue Service has not communicated with them concerning their Canadian retirement accounts.

#### RULING REQUESTED

Husband and Wife 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 for

Tax Years pursuant to Rev. Proc. 2002-23 to defer U.S. federal income taxation on income accrued in RRSP1, RRSP2, RRSP3, LIRA1, and LIRA2, as provided for in 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, 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 Husband and Wife satisfy the standards of Treas. Reg. § 301.9100-3. Accordingly, Husband and Wife are granted an extension of time until 60 days from the date of this ruling letter to make elections 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 Husband and Wife are otherwise eligible to make the above-described elections.

Pursuant to section 4.07 of Rev. Proc. 2002-23, the elections once made cannot be revoked except with the consent of the Commissioner. For each open Tax Year, Taxpayers must file an amended U.S. income tax return to which they attach Forms 8891 (U.S. Information Return for Beneficiaries of Certain Canadian Registered Retirement Plans) for RRSP1, RRSP2, RRSP3, LIRA1, and LIRA2. For each subsequent tax year through the tax year in which a final distribution is made from RRSP 1, RRSP 2, RRSP 3, and LIRA 1 and LIRA 2, Taxpayers must attach to their U.S. income tax return a Form 8891 for each RRSP and LIRA from which a final distribution has not been made.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling. 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.

This ruling is directed only to the taxpayers requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,

M. Grace Fleeman  
Senior Technical Reviewer, CC:INTL:Br1  
Office of the Associate Chief Counsel  
(International)