

**Internal Revenue Service**

Number: **201337008**

Release Date: 9/13/2013

Index Number: 9100.22-00, 9114.03-06

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-127728-12

Date:

May 31, 2013

TY:

Legend

Taxpayer =

RRSP 1 =

RRSP 2 =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Year 5 =

State =

Tax Years =

Dear :

This is in reply to a letter dated May 28, 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 rulings contained in this letter are 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 request for rulings, it is subject to verification on examination.

## FACTS

Taxpayer was born in Canada. While he lived and worked in Canada he established RRSP 1 and RRSP 2. In Year 1, Taxpayer's employer moved him to State to work at a U.S. affiliate. In Year 2, Taxpayer applied for a green card and became a permanent U.S. resident in Year 3.

In Year 4, Taxpayer filed for divorce in State and the Court ordered him to withdraw funds from his RRSP accounts sufficient to pay the attorneys fees and costs associated with the divorce proceeding. Taxpayer withdrew the funds, paid the attorneys' fees and costs, and paid the related income tax to Canada. In Year 5, while preparing his Year 4 U.S. income tax return, his tax advisor first informed him of the need to make an election for U.S. tax purposes to defer recognition of income on RRSP 1 and RRSP 2. The taxpayer made an estimated U.S. federal income tax payment taking into consideration the RRSP distribution and requested an extension of time to make the election under Rev. Proc. 2002-23 pursuant to Article VIII(8) of the U.S.-Canada income tax treaty (the "Treaty"). Taxpayer had timely filed all his U.S. returns beginning in Year 1 and at the time of this ruling request, the Internal Revenue Service had not contacted him regarding the RRSP accounts.

## RULING REQUESTED

Whether Taxpayer may receive 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.

## 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 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 Taxpayers 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 each open Tax Year, Taxpayer must file Form 1040X (Amended U.S. Individual Income Tax Return), and attach a Form 8891 (U.S. Information Return for Beneficiaries of Certain Canadian Registered Retirement Plans) for each RRSP. For each subsequent tax year through the tax year in which the final distribution is made from an RRSP, Taxpayer must attach a Form 8891 for the RRSP to his 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.

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.

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 this letter ruling.

Sincerely,

Elizabeth U. Karzon  
Chief, Branch 1, CC:INTL:Br1  
Office of the Associate Chief Counsel  
(International)