

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact: _____, ID No.

Telephone Number:

Refer Reply To:
CC:INTL:B01
PLR-107047-12

Date:
May 31, 2013

TY:

LEGEND

Taxpayer =

Spouse =

Tax Years =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

RRSP 1 =

RRSP 2 =

Tax Preparer =

Dear _____ :

This is in reply to a letter from your representative dated _____ requesting an extension of time under Treas. Reg. § 301.9100-3 for Taxpayer and Spouse 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 Spouse 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 and raised in Canada. In Year 2, Taxpayer moved to the United States in connection with his employment. In Year 4, Taxpayer became a U.S. citizen.

In Year 1, while still a Canadian resident, Taxpayer established and contributed to a Canadian registered retirement savings plan (RRSP), hereinafter referred to as RRSP 1. When Taxpayer moved to the United States in Year 2, his employer placed certain retirement funds in a second Canadian RRSP for him, hereinafter referred to as RRSP 2. Taxpayer continued to maintain RRSP 1 after moving to the United States, but did not make any additional contributions to RRSP 1 after that time. Taxpayer did not make any contributions to RRSP 2 after its creation.

In Year 2, Taxpayer's U.S. and Canadian tax returns were prepared by Tax Preparer. Taxpayer represents that Tax Preparer did not inquire about or provide any guidance related to RRSP 1 or RRSP 2. Tax Preparer did not inform Taxpayer or Spouse of the need to file Form 8891, "U.S. Information Return for Beneficiaries of Certain Registered Retirement Plans," to defer current income taxation on the earnings in RRSP 1 or RRSP 2 pursuant to Article XVIII(7) of the U.S.-Canada Income Tax Treaty (the "Treaty").

In Year 3, Taxpayer and Spouse hired a U.S. accountant to prepare their U.S. joint income tax return. Taxpayer and Spouse have filed U.S. joint income tax returns since Year 3. Taxpayer represents that the accountant did not inform him or Spouse of the need to file Form 8891 or to make the election under Article XVIII(7) of the Treaty.

In Year 4, Taxpayer and Spouse informed their accountant about the existence of RRSP 1 and RRSP 2. The accountant researched the proper treatment of Canadian RRSPs and learned of Form 8891 and the election under Article XVIII(7) of the Treaty. The accountant advised Taxpayer and Spouse to contact an international tax specialist. After retaining a tax attorney with international experience, Taxpayer and Spouse filed this request. Taxpayer and Spouse represent that prior to Year 4 they were not aware

of the need to file Form 8891 to defer current U.S. income taxation on the earnings in Taxpayer's RRSP 1 or RRSP 2.

As of the date of this ruling request, the Internal Revenue Service had not communicated with Taxpayer or Spouse concerning RRSP 1 or RRSP 2.

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 for Tax Years pursuant to Rev. Proc. 2002-23 to defer U.S. federal income taxation on income accrued in RRSP 1 or RRSP 2, 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 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 and Spouse satisfy the standards of Treas. Reg. § 301.9100-3. Accordingly, Taxpayer and Spouse are 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 and RRSP 2 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 and Spouse 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 open Tax Years, Taxpayer and Spouse must file amended U.S. income tax returns to which they attach Forms 8891 for RRSP 1 and RRSP 2. For each subsequent tax year through the year in which a final distribution is made from RRSP 1 or RRSP 2, Taxpayer and Spouse must attach a Form 8891 for each respective 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.

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

In accordance with the Power of Attorney on file with this office, a copy of this letter is being 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 the letter ruling.

Sincerely,

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

cc: