

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, a Canadian citizen, moved to the United States in Year 1 to teach and do research at a university. At that time Taxpayer had maintained RRSP1, RRSP2 and RRSP3 in Canada, and no withdrawals were made from any of the RRSP accounts during Tax Years. Taxpayer was unaware of requirements under U.S. law of the need to make the timely election under Rev. Proc. 2002-23 to defer recognition of undistributed earnings in her Canadian retirement accounts pursuant to Article XVIII(7) of the U.S.-Canada Income Tax Treaty (the "Treaty") until she consulted a professional tax preparer in Year 4. When Taxpayer was informed of the filing requirements, she immediately requested an extension of time under Treas. Reg. § 301.9100-3 to elect the provisions of Rev. Proc. 2002-23 for Tax Years.

As of the date of this ruling request, Taxpayer represents that the Internal Revenue Service had not communicated with Taxpayer concerning RRSP accounts.

RULING REQUESTED

Whether Taxpayer may receive 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.

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 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 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 she attaches a Form 8891 (U.S. Information Return for Beneficiaries of Certain Canadian Registered Retirement Plans) for RRSP1, RRSP2, and RRSP3. For each subsequent tax year through the tax year in which a final distribution is made from an RRSP, Taxpayer must attach a Form 8891 for the RRSP 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.

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 Powers 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, CC:INTL:Br1
Office of the Associate Chief Counsel
(International)

cc: