

This is in reply to a letter from your representative dated November 27, 2012, as supplemented by a letter dated January 3, 2013, requesting an extension of time under Treas. Reg. § 301.9100-3 for Taxpayers 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, Taxpayer established RRSP 1 and Spouse established RRSP 2. In Year 2, Taxpayer and Spouse became residents of the United States. Taxpayer and Spouse neither contributed to nor withdrew any money from RRSP 1 or RRSP 2 after becoming residents of the United States. Spouse died on Date 1. Taxpayer was appointed as Executor under Spouse's will.

Taxpayer represents that he and Spouse timely filed their U.S. income tax returns for Tax Years. Prior to Date 2, Taxpayer and Spouse were unaware of the need to make an election to defer recognition of undistributed earnings in RRSP1 and RRSP2 pursuant to paragraph 7 of Article XVIII of the U.S. – Canada income tax treaty (the "Treaty"). As soon as Taxpayer learned of need to make an election, he 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 RRSP 1 and 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 RRSP1 and RRSP2, 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 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 an amended U.S. income tax return to which he attaches a Form 8891 (U.S. Information Return for Beneficiaries of Certain Canadian Registered Retirement Plans) for RRSP1 and RRSP2. For each subsequent tax year through the tax year in which a final distribution is made from RRSP1 and RRSP2, Taxpayer must attach to his U.S. income tax return a Form 8891 for each RRSP 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.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

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

cc: