

Internal Revenue Service

Department of the Treasury
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Person To Contact:
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Telephone Number:

Refer Reply To:
CC:INTL:BR1
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Date:
May 31, 2013

TY:

Legend

Taxpayers =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Year 5 =

RRSP 1 =

RRSP 2 =

RRSP 3 =

Tax Years =

Dear _____ :

This is in reply to a letter dated December 14, 2012, 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 in this letter are based upon information and representations submitted by the taxpayers and accompanied by penalty of perjury statements 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

Taxpayers, husband and wife, are Canadian citizens. In Year 1, Taxpayers moved to the United States and became U.S. residents. Taxpayers established RRSP 1, RRSP 2 and RRSP 3 (RRSPs) in Canada prior to moving to the United States. Since moving to the United States they have not made any further contributions or taken any distributions from any of the RRSPs. Taxpayers have filed timely U.S. income tax returns for all relevant tax years beginning in Year 1. Taxpayers hired a tax return preparer to assist them with their U.S. income tax filing obligations for Year 1 through Year 2. In Year 3 through Year 4, Taxpayers self-prepared and filed their own income tax returns. In Year 5, Taxpayers hired a different tax return preparer to help prepare their income tax returns and they were informed for the first time of the need to make an election pursuant to paragraph 7 of Article XVIII of the U.S.-Canada income tax treaty in order to defer U.S. tax on income accrued in their RRSPs. After learning about the requirement to make an election, Taxpayers sought legal advice and subsequently decided to file this request for an extension of time to make the election pursuant to Rev. Proc. 2002-23.

As of the date of this ruling request, Taxpayers state that the Internal Revenue Service had not communicated with them concerning their RRSPs.

RULING REQUESTED

Whether Taxpayers 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 Taxpayers satisfy the standards of Treas. Reg. § 301.9100-3. Accordingly, Taxpayers are 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, Taxpayers 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, Taxpayers must attach a Form 8891 for the 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.

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.

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 representatives.

Sincerely,

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

Enclosure:
Copy for §6110 purposes

cc: