

**Internal Revenue Service**

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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-123594-12

Date:

May 29, 2013

TY:

LEGEND

Taxpayer =

Spouse =

RPP  
Account =

RRIF =

LIF =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Year 5 =

Tax Years =

Dear \_\_\_\_\_ :

This is in reply to a letter from your representative dated May 31, 2012, as supplemented by letters dated November 27, 2012, December 7, 2012, and December 10, 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 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

Taxpayer was born in the United States and moved to Canada to work in Year 1. He established RPP Account while living and working in Canada. In Year 2 and Year 3, Taxpayer worked in the United States on a temporary basis. In Year 4, Taxpayer began to live and work in the United States on a permanent basis. Taxpayer left RPP Account in Canada and neither made additional deposits nor withdrew any funds from RPP Account after leaving Canada.

In Year 5, Taxpayer reached age 70 and was required by Canadian law to move the funds out of RPP Account. He transferred the funds to RRIF and LIF.

Taxpayer represents that he and Spouse filed timely U.S. income tax returns for Tax Years with the assistance of a CPA. Although the CPA knew that Taxpayer had lived and worked in Canada, the CPA did not ask Taxpayer about any retirement accounts in Canada. Taxpayer was unaware of the need to make an election under Rev. Proc. 2002-23 to defer recognition of undistributed earnings in his Canadian retirement accounts pursuant to Article XVIII(7) of the U.S.-Canada Income Tax Treaty (the "Treaty") until a CPA began to prepare Taxpayer and Spouse's Year 5 returns and saw statements for RRIF and LIF. As soon as Taxpayer and Spouse learned about the need to make an election, they immediately requested an extension of time under Treas. Reg. § 301.9100-3 to elect the provisions of Rev. Proc. 2002-23 for Tax Years.

Taxpayer represents that the Internal Revenue Service has not communicated with Taxpayer or Spouse concerning RPP Account, RRIF or LIF

#### 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 RPP Account, RRIF, and LIF, 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 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 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 each open Tax Year prior to Year 5, Taxpayer and Spouse must file an amended U.S. income tax return to which they attach a statement for RPP Account that complies with the requirements of section 3 of Rev. Proc. 2002-23. For Year 5, Taxpayer and Spouse must file an amended U.S. income tax return to which they attach Forms 8891 (U.S. Information Return for Beneficiaries of Certain Registered Retirement Plans) for RRIF and LIF. For each subsequent tax year through the tax year in which a final distribution is made from RRIF, Taxpayer and Spouse must attach a Form 8891 for RRIF to their income tax return. For each subsequent tax year through the tax year in which a final distribution is

made from LIF, Taxpayer and Spouse must attach a Form 8891 for LIF 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 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,

M. Grace Fleeman  
Senior Technical Reviewer  
Office of the Associate Chief Counsel  
(International)

cc: