

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

Number: **200437005**

Release Date: 9/10/04

Index Number: 9100.22-00, 9114.03-06

Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:INTL – PLR-105940-03

Date:  
May 11, 2004

In Re

**LEGEND**

Wife =  
Husband =  
Election Year =  
Subsequent Year =  
Individual A =

Dear :

This replies to your letter dated December 13, 2002, submitted on behalf of Wife and Husband (“Taxpayers”) in which an extension of time is requested under Treas. Reg. § 301.9100-3 for Taxpayers to each elect the provisions of Revenue Procedure 89-45, 1989-2 C.B. 596, for the Election Year, and for Taxpayers to file the required copy of their respective election statement for the Subsequent Year. Additional information was submitted in a letter dated March 8, 2004, in which Taxpayers elected to apply the provisions of Rev. Proc. 2002-23, 2002-1 C.B. 744, to the tax years at issue, rather than to apply Rev. Proc. 89-45, as originally requested in their ruling request. The information submitted for consideration is substantially as set forth below.

The ruling contained in this letter is predicated upon facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for a ruling. Verification of the factual information, representations, and other data may be required as a part of the audit process.

Taxpayers are United States citizens and residents of Canada. Taxpayers each established and contributed to a separate Canadian registered retirement savings plan ("RRSP"). Taxpayers jointly filed U.S. income tax returns for the Election Year and the Subsequent Year on a timely basis. However, Taxpayers failed to make the election provided by Rev. Proc. 89-45 to defer U.S. income tax on the current earnings of the RRSP's for the Election Year. Taxpayers have never taken a distribution from their respective RRSP.

Individual A is a licensed chartered accountant in Canada, and has prepared the Canadian and U.S income tax returns of Taxpayers for over ten years. Neither the Taxpayers nor Individual A was aware of the election provided by Rev. Proc. 89-45, until Individual A read about the election in a professional accounting journal and notified Taxpayers about the election. This information prompted Taxpayers to request relief to file the missed elections for the Election Year and to file the required copy of their respective election statement for the Subsequent Year.

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. § 301.9100-1(c) provides that the Commissioner has discretion to grant a taxpayer a reasonable extension of time, under the rules set forth in § 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. § 301.9100-3(a) provides that requests for relief subject to this section will be granted when the taxpayer provides the evidence 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 and the required filing of the copy of the election statement as provided in Rev. Proc. 2002-23 are regulatory elections within the meaning of § 301.9100-1(b). Therefore, the Commissioner has discretionary authority

under § 301.9100-1(c) to grant Taxpayers an extension of time, provided that Taxpayers satisfy the standards set forth in § 301.9100-3(a).

Based on the facts and circumstances of this case, we conclude that Taxpayers satisfy the standards of § 301.9100-3. Accordingly, Taxpayers are granted an extension of time until 45 days from the date of this ruling letter for Taxpayers to each elect the provisions of Rev. Proc. 2002-23 for the Election Year, and for Taxpayers to file their respective copy of the election statement for the Subsequent Year. Pursuant to section 4.07 of Rev. Proc. 2002-23, the election once made cannot be revoked except with the consent of the Commissioner. Pursuant to section 4.02 of Rev. Proc. 2002-23, Taxpayers must attach a copy of their respective election statement to their timely filed (including extensions) U.S. federal income tax return for each year subsequent to the Election Year, until the tax year in which a final distribution is made from the RRSP.

As provided in § 301.9100-1(a), the granting of an extension of time is not a determination that Taxpayers are otherwise eligible to make the elections for the Election Year, or to file the copy of their respective election statement for the Subsequent Year.

No ruling has been requested, and none is expressed, as to the application of any other section of the Code or regulations to the facts presented.

A copy of this ruling letter should be associated with the tax return for the Election Year, and the Subsequent Year.

This ruling is directed only to Taxpayers who have requested it. I.R.C. § 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file in this office, a copy of this letter is being sent to Taxpayers.

Sincerely,

Associate Chief Counsel (International)

By: /s/ Allen Goldstein  
Allen Goldstein  
Reviewer

Enclosure:  
Copy for § 6110 purposes