

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:INTL
PLR-155841-03

Date:
February 01, 2005

LEGEND

Taxpayer =

Date 1 =

Date 2 =

Dear :

This replies to Taxpayer's letter dated August 1, 2003, in which Taxpayer requests an extension of time under Treas. Reg. § 301.9100-3 to elect the provisions of Revenue Procedure 2002-23, 2002-1 C.B. 744, copy enclosed, for the tax year ended on Date 1. Additional information was submitted in a letter dated May 13, 2004. 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.

Taxpayer is a citizen of Canada and has resident alien status in the United States. During the tax year ended on Date 1, Taxpayer rolled over his Canadian registered retirement savings plan to his Canadian registered retirement income fund.

Taxpayer did not attach a statement as provided by Revenue Procedure 2002-23 to his timely filed IRS Form 1040 with respect to his Canadian Registered Retirement Savings Plan for the tax year ended on Date 1, nor with respect to his Canadian Retirement Income Fund for the tax year ended on Date 2.

The facts submitted under penalties of perjury show that as soon as Taxpayer noticed this inadvertent omission, Taxpayer requested relief as provided under § 301.9100-3.

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 evidence (including affidavits described in § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith within the meaning of § 301.9100-3(b), subject to the conditions set forth in § 301.9100-3(b)(3), and the grant of relief will not prejudice the interests of the Government within the meaning of § 301.9100-3(c).

In the present situation, the election provided in Rev. Proc. 2002-23 is a regulatory election within the meaning of § 301.9100-1(b). Therefore, the Commissioner has discretionary authority under § 301.9100-1(c) to grant Taxpayer an extension of time, provided that Taxpayer satisfies the standards set forth in § 301.9100-3(a).

Based on the facts and circumstances of this case, we conclude that Taxpayer satisfies the standards of § 301.9100-3. Accordingly, Taxpayer is granted an extension of time until 45 days from the date of this ruling letter to elect the provisions of Revenue Procedure 2002-23 for the tax year ended on Date 1.

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, Taxpayer must attach a copy of the election statement required by paragraph 4.01 to his 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 plan (or from any transferee plan within the meaning of paragraph 4.03). For the tax year ended on Date 1 and each subsequent year until the tax year in which a final distribution is made from Taxpayer's registered retirement income fund (or from any transferee plan within the meaning of paragraph 4.03 of Rev. Proc. 2002-23) Taxpayer also must attach a copy of the statement required by paragraph 4.04 of Rev. Proc. 2002-23. With respect to the failure to file a statement for Date 2, this statement should be filed with an amended tax return for Date 2.

As provided in § 301.9100-1(a), the granting of an extension of time is not a determination that Taxpayer is otherwise eligible to make the election for the tax year ended on Date 1.

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 Taxpayer's tax return for the tax year ended on Date 1 and with Taxpayer's amended tax return for the tax year ended on Date 2.

This ruling is directed only to Taxpayer who has 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 Taxpayer's authorized representative.

Sincerely,

Associate Chief Counsel (International)

By: /s/ Allen Goldstein

Allen Goldstein
Reviewer

Enclosures:

Copy of Rev. Proc. 2002-23
Copy for § 6110 purposes