

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
ID No.

Telephone Number:

Refer Reply To:
CC:INTL
PLR-143749-09
Date: January 6, 2010

A =

Tax Years =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Dear

This is in reply to a letter dated September 20, 2009, requesting an extension of time under Treas. Reg. § 301.9100-3 for A to elect the provisions of Rev. Proc. 89-45, 1989-2 596, and Rev. Proc. 2002-23, 2002-1 C.B. 744, for Tax Years. 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.

A was a U.S. resident from Year 1 until Year 2, when he became a U.S. citizen. Sometime prior to Year 1, A established certain Canadian Registered Retirement Savings Plans, both of which were consolidated into one account in Year 3. A has

never made an election to defer the taxation of income accrued in the RRSP pursuant to Rev. Proc. 89-45 or Rev. Proc. 2002-23.

In Year 4, A engaged his current tax return preparer to prepare his Year 4 return and the following year's return. A fully relied upon his current tax return preparer with respect to his personal income tax matters and the preparation of his federal income tax returns, and attachments and elections related thereto. A was not aware and was never advised by his return preparer that he had to make an election pursuant to the United States-Canada Income Tax Convention to defer income taxation on income accrued in his RRSP or that he had to file Form 8891 for his RRSP.

Recently, his current return preparer discovered A's failure to make an election to defer tax under the U.S.-Canada Income Tax Convention and advised him of the need to make the election.

A states that the Internal Revenue Service has not communicated with him in any way regarding his RRSP.

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. 89-45 and 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 A an extension of time, provided that A satisfies the standards set forth in Treas. Reg. § 301.9100-3(a).

Based on the facts and circumstances of this case, we conclude that A satisfies the standards of Treas. Reg. § 301.9100-3. Accordingly, A is granted an extension of time until 60 days from the date of this ruling letter to elect the provisions Rev. Proc. 2002-23 for Tax Years.

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 2004 and all subsequent tax years until the tax year in which a final distribution is made from the RRSP, A must file a Form 8891 for the RRSPs.

As provided in Treas. Reg. § 301.9100-1(a), the granting of an extension of time is not a determination that A is otherwise eligible to make the above-described election.

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 A's amended tax returns for Tax Years.

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

Sincerely,

M. Grace Fleeman
Senior Technical Reviewer
CC:INTL:Br1

Enclosure:
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