

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact:

ID No.

Telephone Number:

Refer Reply To:

CC:INTL

PLR-142564-09

Date: March 12, 2010

A =

Tax Years =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Dear:

This is in reply to a letter dated September 17, 2009, requesting an extension of time under Treas. Reg. § 301.9100-3 for A to elect the provisions of 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 A 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 is a U.S. resident who established a Canadian Registered Retirement Savings Plan (RRSP) in Year 1. A became a U.S. resident in Year 2. A filed a Form 8891 for Year 3 on which he made an election for Year 3 and subsequent years, pursuant to paragraph

7 of Article XVIII of the Treaty,<sup>1</sup> to defer U.S. tax on income accrued in his RRSP. A was not aware, nor was he advised by his previous tax advisor, that he had to make an election that was effective as of Year 2, until his current tax preparer discovered such failure in Year 4.

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. 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 of 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. A must file Form 8891 for 2004 and all subsequent tax years for which A has not already filed a Form 8891 until the tax year in which a final distribution is made from the RRSP.

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<sup>1</sup> The Convention between the United States of America and Canada with respect to Taxes on Income and on Capital, signed at Washington on September 26, 1980, as amended by protocols signed June 14, 1983, March 28, 1984, March 17, 1995, July 29, 1997, and Sept. 21, 2007.

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,

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

Enclosure:  
Copy for 6110 purposes