

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Date:  
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TY:

Legend

A =

Company =

RRSPs =

Tax Years =

Year 1 =

Year 2 =

Year 3 =

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 ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the requested rulings, it is subject to verification on examination. The information submitted for consideration is substantially as set forth below.

## FACTS

A established certain Canadian Registered Retirement Savings Plans (RRSPs) in Year 1. A has been a U.S. resident since Year 2. At all times during A's ownership of the RRSPs, she was not aware that she had to make an election to defer U.S. taxation on income accrued in her RRSPs based on Article XVIII(7) of the United States-Canada Income Tax Convention (the "Treaty").

In Year 2, A engaged the services of Company to prepare her returns for Year 2 and all subsequent tax returns, and relied on Company with respect to her personal income tax matters and the preparation of her federal income tax returns, attachments, and elections related to such returns. In Year 3, Company reviewed its files and discovered that it had not informed A of the need to make an election to defer income tax under Article XVIII(7) of the Treaty. After A was notified of the need to make an election to benefit from the Treaty, she immediately took action to request an extension of time to file an election under Treas. Reg. §301.9100-3.

As of the date of this ruling request, the Internal Revenue Service has not communicated with A in any way regarding her RRSPs.

## RULING REQUESTED

A 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 pursuant to Rev. Proc. 2002-23, to defer U.S. federal income taxation on income accrued in her RRSPs, as provided for in Article XVIII(7) of the Treaty for Tax Years.

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

Based solely on the information submitted and representations made, 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. 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.

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

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.

A copy of this letter must be attached to A's U.S. income tax return for the year in which A obtained the ruling and should be associated with A's amended returns for Tax Years.

This letter ruling is directed only to the taxpayer 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.

Sincerely,

\_\_\_\_\_/s/\_\_\_\_\_  
Quyên Huynh  
Senior Counsel, Branch 1  
Office of Associate Chief Counsel  
(International)

Enclosure:  
Copy for 6110 purposes

cc: