

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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TY:

Legend

Taxpayer A =

Taxpayer B =

Financial Institution M =

RRSP =

Tax Years 1-8 =

Tax Year 1 =

Tax Year 2 =

Tax Year 3 =

Tax Years 3-8 =

Tax Years 4-8 =

Year 1 =
Year 2 =
Date A =
Date B =
Tax Preparer =

Dear

This is in reply to a letter dated Date A requesting an extension of time under Treas. Reg. § 301.9100-3 for Taxpayer A to elect the provisions of Rev. Proc. 2002-23, 2002-1 C.B. 744, with respect to Tax Years 1-8. Additional information was submitted by Taxpayers in a letter dated Date B.

The ruling contained in this letter is based upon information and representations submitted by Taxpayers 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 ruling, it is subject to verification on examination. The information submitted for consideration is substantially as set forth below.

FACTS

Taxpayer A was born in the United States in Year 1 and holds both Canadian and United States citizenship. When Taxpayer A was 22 days old, he left the United States in connection with his parents' return to Canada. Following this, Taxpayer A became a naturalized Canadian citizen.

Taxpayer A lived and worked in Canada until Year 2 when he moved to the United States to continue his education at a California university. While living and working in Canada prior to his move to the United States, Taxpayer A established, and contributed to, a Canadian Registered Retirement Savings Plan (RRSP) with Financial Institution. Taxpayer A closed all of his Canadian accounts prior to his move to the United States other than the RRSP with Financial Institution. Taxpayer A did not close the RRSP at that time, because he planned to return to Canada following graduation. Instead, Taxpayer A remained in the United States. After moving to the United States in Year 2, Taxpayer A ceased making annual contributions to the RRSP, although he continued to maintain the RRSP with Financial Institution.

Taxpayer A is married to Taxpayer B. Taxpayer A filed an individual income tax return for Tax Years 1 and 2. Taxpayers filed joint federal income tax returns for Tax Years 3-8.

Taxpayer A prepared his income tax returns for Tax Years 1 and 2, as well as the joint income tax return he and Taxpayer B filed for Tax Year 3. Taxpayers' joint income tax returns for Tax Years 4-8 were prepared by Tax Preparer. Tax Preparer did not advise Taxpayer A he should elect to defer current U.S. income taxation on earnings in the RRSP pursuant to Article XVIII(7) of the U.S.-Canada Income Tax Treaty (Treaty).

At all times relevant to this ruling request, recognition of the accrued earnings in the RRSP has been deferred for U.S. income tax purposes. Taxpayer A has never withdrawn any funds nor received any distributions from the RRSP. Taxpayer B has not established any RRSPs.

Taxpayers became aware that certain tax filing requirements might apply to the RRSP due to publicity relating to the Internal Revenue Service's offshore voluntary compliance initiatives. Taxpayers then hired a tax advisor who discovered that Taxpayer A had not elected for Tax Years 1-8 to defer current U.S. income taxation pursuant to the Treaty. Taxpayers state that the Internal Revenue Service has not communicated with them concerning the RRSP or the lack of an election made on Form 8891.

RULING REQUESTED

Taxpayers request 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 Taxpayer A's RRSP, as provided for in Article XVIII(7) of the Treaty, for Tax Years 1-8.

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 Taxpayer A an extension of time, provided that Taxpayer 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 Taxpayer A satisfies the standards of Treas. Reg. § 301.9100-3. Accordingly, Taxpayer A is granted an extension of time until 60 days from the date of this ruling letter to make an election for Tax Years 1-8 under Rev. Proc. 2002-23. As provided in Treas. Reg. § 301.9100-1(a), the granting of an extension of time is not a determination that Taxpayer 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 1 and 2, Taxpayer A must file an amended U.S. income tax return to which Form 8891, "U.S. Information Return for Beneficiaries of Certain Registered Retirement Plans," for the RRSP is attached. For Tax Years 3-8, Taxpayers must file amended U.S. income tax returns to which they attach Form 8891 for the RRSP. For each subsequent tax year through the year in which a final distribution is made from the RRSP, Taxpayers must attach Form 8891 for the RRSP to their U.S. income tax return.

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 Taxpayers' U.S. income tax return for the year in which Taxpayers obtained the ruling and should be associated with Taxpayer A's amended returns for Tax Years 1 and 2 and Taxpayers' amended returns for Tax Years 3-8.

This letter ruling is directed only to the taxpayers 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,

Craig R. Gilbert
Special Counsel to the Deputy Associate Chief
Counsel (International Field Service and Litigation)
Office of Associate Chief Counsel (International)

Enclosure:
Copy for 6110 purposes

cc: