

**Internal Revenue Service**

Number: **201309001**

Release Date: 3/1/2013

Index Number: 9100.22-00, 9114.03-06

Department of the Treasury

Washington, DC 20224

[Third Party Communication:

Date of Communication: Month DD, YYYY]

Person To Contact:

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CC:INTL:BR1

PLR-111527-12

Date:

November 26, 2012

LEGEND

Husband =

Wife =

RPP1 =

RPP2 =

RPP3 =

RRSP =

Country A =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Year 5 =  
Year 6 =  
Year 7 =  
Year 8 =  
Tax Years =

Dear :

This is in reply to a letter dated March 14, 2012, as amended by supplemental information dated and July 06, 2012, requesting an extension of time under Treas. Reg. § 301.9100-3 for Husband and Wife (Taxpayers) to elect the provisions of Rev. Proc. 2002-23, 2002-1 C.B. 7444, for Tax Years.

The rulings contained in this letter are 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 request for rulings, it is subject to verification on examination.

#### FACTS

Husband was born and educated in Canada. In Year 1, Husband began contributing to a Canadian registered pension plan, RPP1. In Year 2, Husband began making annual contributions to a Canadian registered retirement savings plan RRSP and also to a second Canadian registered pension plan, RPP2. Wife was born in Country A and moved to Canada to complete graduate studies and began teaching. In Year 3, Wife obtained Permanent Residency in Canada and subsequently obtained her Canadian citizenship in Year 4. In Year 5, Wife began contributing to a Canadian registered pension plan, RPP3.

Taxpayers moved to the United States in Year 6 to further their careers. In Year 7, Taxpayers obtained their green cards and retained their Canadian citizenship. Taxpayers have never made any withdrawals from the RRSP or RPPs since the accounts were opened.

Taxpayers were not aware of the need to make an election pursuant to paragraph 7 of Article XVIII of the United States – Canada Income Tax Treaty in order to defer U.S. tax on income accrued in RRSP, RPP1, RPP2, and RPP3. They had initially relied on a tax preparer and later used the preparer's software to prepare their returns. However, neither the preparer nor its software addressed this issue. In Year 8, Husband became

aware that they may not have fully complied with new IRS rules about Canadian RRSP and RPP accounts and sought professional advice from tax attorneys with experience in international issues.

Taxpayers state that the Internal Revenue Service has not communicated with them concerning RRSP, RPP 1, RPP 2 or RPP 3 or the lack of an election pursuant to Rev. Proc. 2002-23.

#### RULING REQUESTED

Whether Taxpayers may receive an extension of time under Treas. Reg. § 301.9100-3 for Taxpayers to elect the provisions of Rev. Proc. 2002-23, 2002-1 C.B. 744, 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 Taxpayers an extension of time, provided that Taxpayers satisfy the standards set forth in Treas. Reg. § 301.9100-3(a).

Based solely on the information submitted and representations made, we conclude that Taxpayers satisfy the standards of Treas. Reg. § 301.9100-3. Accordingly, Taxpayers are granted an extension of time until 60 days from the date of this ruling letter to make elections for Tax Years 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 Taxpayers are 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, Taxpayers must file amended U.S. income tax returns to which they attach a Form 8891 (U.S. Information Return for Beneficiaries of Certain Canadian Registered Retirement Plans) for RRSP and copies of the statement described in section 4.01 of Rev. Proc. 2002-23 for each RPP that Taxpayers have an interest in. For each subsequent tax year through the tax year in which a final distribution is made from RRSP, Taxpayers must attach a Form 8891 for the RRSP to their U.S. income tax return. For each subsequent tax year through the tax year in which Taxpayers have each received a final distribution from an RPP, each Taxpayer who has not received a final distribution from RPP must attach a copy of the statement described in section 4.01 of Rev. Proc. 2002-23 for RPP 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.

This ruling is directed only to the taxpayers requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Powers of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

Quyen Huynh  
Senior Counsel, Branch 1  
Office of the Associate Chief Counsel  
(International)

Enclosure (1)  
Copy for 6110 purposes