

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact: _____, ID No.

Telephone Number:

Refer Reply To:
CC:INTL:B01
PLR-128194-11

Date:
May 31, 2013

TY:

Legend

Taxpayer =

Spouse =

RRSP 1 =

RRSP 2 =

RRSP 3 =

Tax Years =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Dear _____ :

This is in reply to a letter dated _____, requesting an extension of time under Treas. Reg. § 301.9100-3 for Taxpayer and Spouse 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 Taxpayer and Spouse 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

In Year 1, Taxpayer married Spouse, a U.S. citizen. Prior to becoming a U.S. citizen in Year 2, Taxpayer was a citizen and resident of Canada, during which time Taxpayer established two Canadian Registered Retirement Savings Plans (RRSPs), RRSP 1 and RRSP 2. Shortly after marrying Taxpayer in Year 1, Spouse moved to Canada. While residing in Canada, Spouse established RRSP 3. Beginning in Year 2, Taxpayer and Spouse began filing joint U.S. income tax returns. Taxpayer and Spouse both relied on a Canadian accountant to prepare their Canadian and U.S. income tax returns.

Taxpayer and Spouse moved to the United States and engaged the services of U.S. accountants to prepare their joint U.S. income tax returns beginning with the Year 3 tax year. Since Year 3, none of their U.S. accountants made an election for Taxpayer and Spouse pursuant to Rev. Proc. 89-45 or advised them of the need to file Form 8891 for years beginning after publication of Rev. Proc. 2002-23 to defer U.S. taxation of earnings accruing in their RRSP accounts.

At all times during Taxpayer and Spouse's ownership of their RRSP accounts, they were not aware nor advised by their Canadian or U.S. accountants that they had to file Form 8891 and make an election to defer U.S. taxation on income accruing in RRSP 1, RRSP 2, and RRSP 3 pursuant to Article XVIII(7) of the United States-Canada Income Tax Convention (Treaty).

In Year 4, Taxpayer and Spouse met with their U.S. accountant to discuss various tax matters. During the course of a discussion regarding Taxpayer and Spouse's finances, the U.S. accountant discovered for the first time that Taxpayer and Spouse had not made elections to defer tax on income accruing in their RRSP accounts pursuant to Article XVIII(7) of the Treaty. After meeting with their U.S. accountants and attorneys to

discuss this matter, Taxpayer and Spouse took immediate action to request an extension of time to elect the provisions of Rev. Proc. 2002-23 for Tax Years.

As of the date of this ruling request, the Internal Revenue Service had not communicated with Taxpayer or Spouse in any way regarding RRSP 1, RRSP 2, or RRSP 3.

RULING REQUESTED

Taxpayer and Spouse 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 RRSP 1, RRSP 2, and RRSP 3, 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 Taxpayer and Spouse an extension of time, provided that Taxpayer and Spouse satisfy the standards set forth in Treas. Reg. § 301.9100-3(a).

Based solely on the information submitted and representations made, we conclude that Taxpayer and Spouse satisfy the standards of Treas. Reg. § 301.9100-3. Accordingly, Taxpayer and Spouse 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 Taxpayer and Spouse 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 open Tax Years, Taxpayer and Spouse must file amended U.S. income tax returns to which they attach Forms 8891 for each of their RRSP Accounts. For each subsequent tax year through the year in which a final distribution is made from RRSP 1, RRSP 2 or RRSP 3, Taxpayer and Spouse must file a Form 8891 for each respective RRSP account.

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 Taxpayer and Spouse's U.S. income tax return for the year in which Taxpayer and Spouse obtained the ruling and should be associated with Taxpayer and Spouse's amended returns for open Tax Years.

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 representatives.

Sincerely,

Elizabeth U. Karzon
Chief, Branch 1
Office of Associate Chief Counsel
(International)

Enclosure:

Copy for 6110 purposes

cc: