

**Internal Revenue Service**

Department of the Treasury  
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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:INTL-PLR-164304-02

Date:

May 05, 2004

In re:

**LEGEND**

Taxpayer =

Election =

Year

Individual A =

Dear :

This replies to your letter dated November 15, 2002, submitted on behalf of Taxpayer in which Taxpayer requests an extension of time under Treas. Reg. § 301.9100-3 to elect the provisions of Revenue Procedure 89-45, 1989-2 C.B. 596, for the Election Year. Additional information was submitted in a letter dated February 11, 2004, in which Taxpayer elected to apply the provisions of Rev. Proc. 2002-23, 2002-1 C.B. 744, rather than Rev. Proc. 89-45, as originally requested in the ruling request. 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 the taxpayer 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.

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Taxpayer is a United States citizen, and a Canadian citizen and Canadian resident. Taxpayer established and contributed to a Canadian registered retirement savings plan ("RRSP"). Taxpayer timely filed her U.S. income tax return for the Election Year but she failed to make the election under Rev. Proc. 89-45 to defer U.S. income tax on the current earnings of the RRSP. Taxpayer has never taken a distribution from her RRSP.

Individual A is a licensed chartered accountant in Canada, and has prepared the Canadian and U.S income tax returns of Taxpayer for over ten years. Neither the Taxpayer nor Individual A was aware of the election provided by Rev. Proc. 89-45, until Individual A read about the election in a professional accounting journal and notified Taxpayer about the election. This information prompted Taxpayer to request relief to file the missed election.

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. § 301.9100-1(c) provides that the Commissioner has discretion to grant a taxpayer a reasonable extension of time, under the rules set forth in § 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. § 301.9100-3(a) provides that requests for relief subject to this section will be granted when the taxpayer provides the evidence 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 § 301.9100-1(b). Therefore, the Commissioner has discretionary authority under § 301.9100-1(c) to grant Taxpayer an extension of time, provided that Taxpayer satisfies the standards set forth in § 301.9100-3(a).

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Based on the facts and circumstances of this case, we conclude that Taxpayer satisfies the standards of § 301.9100-3. Accordingly, Taxpayer is granted an extension of time until 45 days from the date of this ruling letter to elect the provisions of Rev. Proc. 2002-23 for the Election Year. Pursuant to section 4.07 of Rev. Proc. 2002-23, the election once made cannot be revoked except with the consent of the Commissioner. Pursuant to section 4.02 of Rev. Proc. 2002-23, Taxpayer must attach a copy of the election statement to her timely filed (including extensions) U.S. federal income tax return for each year subsequent to the Election Year, until the tax year in which a final distribution is made from the RRSP.

As provided in § 301.9100-1(a), the granting of an extension of time is not a determination that Taxpayer is otherwise eligible to make the election for the Election Year.

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 the tax return for the Election Year.

This ruling is directed only to Taxpayer who has requested it. I.R.C. § 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file in this office, a copy of this letter is being sent to Taxpayer.

Sincerely,

Associate Chief Counsel (International)

By: /s/ Allen Goldstein

Allen Goldstein

Reviewer

Enclosure:

Copy for § 6110 purposes