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Prenez note que ce document, bien qu'exact au moment émis, peut ne pas représenter la position actuelle de l'ARC.

PRINCIPAL ISSUES: Whether the Minister could accept a late-filed election to enable a pensioner to split eligible pension income with a pension transferee.
POSITION: It depends on the facts.
REASONS: Whether the Minister could accept a late-filed election is determined by the pension transferee's normal reassessment period and the deadline for late-filing the joint election.

January 25, 2012

Individual Returns Directorate	HEADQUARTERS	Income Tax
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		2011-042992

Late-Filed Election To Split Pension Income

We are replying to your request for a technical interpretation. At issue is whether the Minister could accept a late-filed election to enable a taxpayer ("pensioner") to split eligible pension income with his or her spouse or common law partner ("pension transferee").

In your example, for the 2007 taxation year, a pensioner and a pension transferee filed returns by the due date, which were initially assessed in May 2008. They filed a joint election more than three years after the initial assessment, but before the deadline for late filing the election, December 31, 2011. You have raised the concern that the election would have been filed after the expiration of the normal reassessment period and the Minister may not be able to reassess both the pensioner and the pension transferee to give effect to the election.

As explained below, whether the Minister could accept a late-filed election is determined by the pension transferee's normal reassessment period and the deadline for late-filing the election.

Pursuant to section 60.03 of the Income Tax Act, a pensioner may make a joint election on Form T1032 (the "Form") to split eligible pension income, defined therein, with a pension transferee. The Form must be completed, signed, and attached to their returns by the filing-due date of the taxation year in issue. If a pensioner and a pension transferee have made a joint election in a taxation year to that effect, the pensioner is deemed not to have received the amount of the split pension income and the pension transferee is deemed to have received that amount. Where the deemed pension income was subject to withholdings, subsection 153(2) deems a portion of the amounts withheld to have been withheld on the pension transferee's behalf.

Where the pensioner and the pension transferee have not filed the Form on time, the Minister may, pursuant to subsection 220(3.201), extend the time for the pensioner to file the election, if two conditions exist. First, the pensioner must be a Canadian resident. Second, the pensioner must make the request no later than three calendar years after the filing-due date for the year to which the election applies.

Paragraph 152(3.1)(b) states that the normal reassessment period for an individual is three years, calculated from the earlier of the day that the notice of assessment was sent, and the day of sending an original notification that no tax is payable. On the other hand, subsection 152(4.2) authorises the Minister, on application by a taxpayer within ten calendar years after the end of a taxation year, to reassess tax, interest, or penalties ("amounts") payable by the taxpayer, where the purpose of the reassessment is to determine, after the expiry of the normal reassessment period, the amounts of any refund or reduction of amounts payable for that year.

As you noted, subsection 152(4.2) would permit the Minister to reassess a pensioner beyond the normal reassessment period because the election would result in a reduction of tax payable. However, where the effect of the election is to increase a pension transferee's tax payable, but not generate a refund as a result of the application of subsection 153(2), the pension transferee could not be reassessed. We agree.

Therefore, where the election is filed after a pension transferee's normal reassessment period has expired, but is filed within the deadline allowed by subsection 220(3.201), the Minister should accept the election if it does not result in an increase in the pension transferee's tax payable or if it results in a refund to the pension transferee. Otherwise, the Minister should not accept the election, for either the pensioner or the pension transferee, since it is a joint election and neither subsection 152(4) nor (4.2) permits the Minister to reassess the pension transferee.

Should you have any questions or require additional information, please do not hesitate to contact Lindsay Frank at the number above, or Terry Young at (613) 957-8283.

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