

Internal Revenue Service

Number: **200604007**

Release Date: 1/27/2006

UIL: 1296.00-00, 9100.22-00

Department of the Treasury

Washington, DC 20224

[Third Party Communication:

Date of Communication: Month DD, YYYY]

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:INTL:BO2

PLR-124236-05

Date:

October 17, 2005

In Re:

LEGEND

Taxpayer =

Corporation X =

Country A =

Tax Advisor N =

Individual S =

Date 1 =

Date 2 =

Date 3 =

Dear :

This is in response to a letter dated April 29, 2005, submitted on behalf of Taxpayer by its authorized representative, requesting an extension of time under Treas. Reg. § 301.9100-1 to make a mark to market election under section 1296 of the Internal Revenue Code ("Code") for the tax year ending June 30, 2004. The information submitted for consideration is set forth below.

FACTS

Taxpayer is a U.S. corporation registered under the Investment Company Act of 1940, as amended, and is a regulated investment company. Taxpayer operates as an open-ended, no-load mutual fund that holds growth stocks diversified by industry, including Corporation X, a corporation organized under the laws of Country A. Corporation X is a passive foreign investment company, within the meaning of section 1297(a).

Taxpayer failed to make a timely section 1296 election for stock it holds in Corporation X. Upon advice from Tax Advisor N, Taxpayer intended to make a mark to market election under section 1296 for its Corporation X stock for the tax year ending on June 30, . Tax Advisor N prepared the tax return for Taxpayer, including the Form 8621, *Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund*. The Form 8621 was prepared showing that Taxpayer elected to mark to market its Corporation X stock.

Taxpayer employs Individual S to, among other things, review tax returns and sign and file the return with the appropriate taxing authority. Individual S received the tax return prepared by Tax Advisor N on behalf of the Taxpayer on date 1. The return was due to be filed with the Internal Revenue Service (IRS) on or before date 2. However, due to intervening circumstances and the sundry responsibilities of the job, Individual S overlooked filing the tax return with the IRS until date 3, which was after the due date for making a section 1296 election for Taxpayer's taxable year ended June 30, . Taxpayer requests an extension of time to make the section 1296 election for its taxable year ending on June 30, with respect to the stock it holds in Corporation X. Taxpayer has represented that it is requesting this relief before the failure to make the election was discovered by the IRS.

LAW

Section 1296(a) provides that, in the case of marketable stock in a passive foreign investment company that is owned by a United States person at the close of any taxable year, the person may elect to include in gross income the excess of the fair market value of the stock over its adjusted basis.

Treas. Reg. § 1.1296-1(h) provides that an election under section 1296 for a taxable year must be made on or before the due date (including extensions) of the person's U.S. income tax return for that year.

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 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 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.

Treas. Reg. § 301-9100-3(b)(1) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer –

- (i) Requests relief before the failure to make the regulatory election is discovered by the IRS;
- (ii) Failed to make the election because of intervening events beyond the taxpayer's control;

- (iii) Failed to make the election because, after exercising reasonable diligence, the taxpayer was unaware of the necessity for the election;
- (iv) Reasonably relied on the written advice of the IRS; or
- (v) Reasonably relied on a qualified tax professional, and the tax professional failed to make, or advise the taxpayer to make, the election.

ANALYSIS

The time and manner of making an election under section 1296 is prescribed by regulation. See Treas. Reg. § 1.1296-1(h). Because section 1296 falls within subtitle A of the Code, it is within the Commissioner's discretion to grant a taxpayer a reasonable extension of time to make such an election. Based on the affidavit of Individual S and the other information submitted, we conclude that Taxpayer acted reasonably and in good faith because relief was requested before the failure to make the regulatory election was discovered by the IRS. Additionally, we conclude that the granting of an extension of time to make the election will not prejudice the interests of the Government. See Treas. Reg. § 301.9001-3(c).

CONCLUSION

Accordingly, Taxpayer is granted an extension of time until 60 days from the date of this letter ruling to make an election under section 1296 with respect to the stock it holds in Corporation X.

The Taxpayer should attach a copy of this letter ruling to its federal income tax return for the relevant year.

This ruling is directed only to the taxpayer who requested it. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,

Valerie Mark Lippe
Senior Technical Reviewer
International, Branch 2
Office of Chief Counsel

cc: