

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

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Date:

August 10, 2009

TY:

Legend

Taxpayers =

FC =

Year 1 =

Year 2 =

A =

B =

Accounting Firm =

Dear :

This is in response to the letter received by our office on October 20, 2008, submitted by your authorized representative, requesting the consent of the Commissioner of the Internal Revenue Service to make a retroactive qualified electing fund ("QEF") election under section 1295(b) of the Internal Revenue Code ("Code") and Treas. Reg. §1.1295-3(f).

The rulings contained in this letter are based upon information and representations submitted by Taxpayers and accompanied by a penalty of perjury statement executed by appropriate parties. 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

Taxpayers are U.S. citizens who file a joint return. Since Year 1, Taxpayers made investments in FC that hold shares related to A and B. At all times, Taxpayers' investment advisor had, and exercised, full discretion over the investments in FC. Taxpayers also engaged Accounting Firm to prepare their federal income tax return since the period during which they made the investments in FC and to advise them on any elections that were appropriate under the circumstances. Neither Taxpayers' investment advisor nor Accounting Firm advised Taxpayers that FC was a passive foreign investment company ("PFIC") under section 1297 of the Code. It was not until Year 2 that Taxpayers received a letter from FC advising its U.S. shareholders that it was a PFIC.

Taxpayers have submitted affidavits, signed under penalties of perjury, describing the events that led to the failure to make the QEF election by the election due date, including the role of their investment advisor and Accounting Firm.

Taxpayers represent that as of the date of this request for ruling, the PFIC status of FC has not been raised by the IRS on audit for any of the taxable years at issue.

RULING REQUESTED

Taxpayer requests the consent of the Commissioner of the Internal Revenue Service to make a retroactive election under Treas. Reg. §1.1295-3(f) with respect to FC for Year 1.

LAW

Section 1293(a) of the Code provides that every U.S. person who owns stock of a QEF at any time during the taxable year of such fund shall include in gross income (1) as ordinary income, such shareholder's pro rata share of the ordinary earnings of such fund for such taxable year, and (2) as long-term capital gain, such shareholder's pro rata share of the net capital gain of such fund for such taxable year.

Section 1295(a) provides that any PFIC shall be treated as a QEF with respect to a taxpayer if (1) an election by the taxpayer under section 1295(b) applies to such company for the taxable year and (2) the company complies with such requirements as the Secretary may prescribe for purposes of determining the ordinary earnings and net capital gains of such company.

Under section 1295(b)(2), a QEF election may be made for any taxable year at any time on or before the due date (determined with regard to extensions) for filing the return for such taxable year. To the extent provided in regulations, such an election

may be made after such due date if the taxpayer failed to make an election by the due date because the taxpayer reasonably believed the company was not a PFIC.

Under Treas. Reg. §1.1295-3(f), a taxpayer may request the consent of the Commissioner to make a retroactive QEF election for a taxable year if:

1. the shareholder reasonably relied on a qualified tax professional, within the meaning of Treas. Reg. §1.1295-3(f)(2);
2. granting consent will not prejudice the interests of the United States government, as provided in Treas. Reg. §1.1295-3(f)(3);
3. the request is made before a representative of the Internal Revenue Service raises upon audit the PFIC status of the corporation for any taxable year of the shareholder; and
4. the shareholder satisfies the procedural requirements of Treas. Reg. §1.1295-3(f)(4).

CONCLUSION

Based on the information submitted and representations made, consent is granted to Taxpayers to make a retroactive QEF election with respect to FC for Year 1 under Treas. Reg. §1.1295-3(f), provided that they comply with the rules under Treas. Reg. §1.1295-3(g) regarding the time and manner for making the retroactive QEF elections.

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

A copy of this ruling must be attached to any tax return to which it is relevant.

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

Sincerely,

Ethan A. Atticks
Senior Technical Reviewer, Branch 2
(International)