

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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LEGEND

Taxpayer =
Tax Advisor =
Corporation A =
Date 1 =
Date 2 =
Date 3 =
Year 1 =
Year 2 =

x number =

a percent =

Dear :

This is in response to a letter dated December 9, 2008, submitted on behalf of Taxpayer by its authorized representative, requesting the consent of the Commissioner 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) with respect to Taxpayer’s investment in Corporation A.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer 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 request for rulings, it is subject to verification on examination.

FACTS

On Date 1, Taxpayer, a U.S. citizen, purchased x number shares of Corporation A making Taxpayer an a percent owner of Corporation A. As a result of its business activities, Corporation A is classified as a PFIC under § 1297 of the Code. In order to prepare its tax return for Year 1, Taxpayer engaged the services of Tax Advisor who is a qualified tax professional with over 23 years experience in domestic and international taxation. However, Tax Advisor failed to identify Corporation A as a PFIC. Taxpayer filed its tax return on Date 2, but shortly thereafter Taxpayer received from Corporation A an information statement in accordance with Treas. Reg. § 1.1295-1 detailing Taxpayer's pro rata share of Corporation's earnings.

On Date 3, Taxpayer supplied Tax Advisor with the information statement from Corporation A, and Tax Advisor requested a ruling. As a part of its ruling submission, Taxpayer has submitted an affidavit, under penalties of perjury, describing the events that led to the failure to make a QEF election by the election due date, including the role of Tax Advisor. Taxpayer represents that in all issues related to Corporation A, Taxpayer relied on the advice of Tax Advisor. Taxpayer has also submitted an affidavit of Tax Advisor corroborating the statements made by Taxpayer.

RULING REQUESTED

Taxpayer requests the consent of the Commissioner of the Internal Revenue Service to make a retroactive QEF election under Treas. Reg. § 1.1295-3(f) with respect to Corporation A.

LAW

Code § 1293(a) 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.

Code § 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 Code 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 Code § 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)(1), 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 § 1.1295-3(f)(2);
2. Granting consent will not prejudice the interests of the United States government, as provided in § 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 § 1.1295-3(f)(4).

CONCLUSION

Based on the information submitted and representations made with Taxpayer's ruling request, we conclude that Taxpayer has satisfied Treas. Reg. § 1.1295-3(f). Accordingly, consent is granted to Taxpayer to make a retroactive QEF election with respect to Corporation A for Year 1, provided that Taxpayer complies with the rules under Treas. Reg. § 1.1295-3(g) regarding the time and manner for making the retroactive QEF election.

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.

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

Sincerely,

Ethan Atticks
Senior Technical Reviewer Branch 2
(International)