

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

[Third Party Communication:

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:INTL:B02

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Date:

March 02, 2011

TY:

Legend

Taxpayer =

FC =

Year 1 =

State X =

Country Y =

Subsidiary =

Parent =

Affiliate =

Accounting Firm =

Accountant 1 =

Accountant 2 =

VP =

Attorney 1 =

President =

Law Firm =

Dear :

This is in response to the letter received by our office on April 30, 2010, submitted by your authorized representative, requesting the consent of the Commissioner of the Internal Revenue Service for Taxpayer 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 FC.

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

Taxpayer is a State X corporation and made an investment in FC through Subsidiary, a State X limited liability company, in Year 1. Subsidiary always has been a disregarded for U.S. federal income tax purposes as an entity separate from Taxpayer. Parent, a Country Y corporation, established Taxpayer to invest in U.S. real estate. The investment advisor and manager on behalf of Parent in connection with its investment in Taxpayer is Affiliate, also a County Y corporation. Taxpayer is a calendar-year and accrual-method taxpayer.

Since its incorporation, Taxpayer has engaged Accounting Firm to prepare its federal income tax returns. Taxpayer's federal income tax returns have been signed by Accountant 1 or Accountant 2 since Year 1. Accountant 1 and Accountant 2 are competent tax professionals and have advised Taxpayer with respect to U.S. tax issues, including elections, for many years.

Prior to investing in FC, VP, who is the vice-president and secretary of Taxpayer, and Attorney 1, who is a tax specialist from Law Firm, discussed and concluded that an investment in FC would be an investment in shares of a passive foreign investment company ("PFIC") and that a QEF election should be made with respect to FC. President, who is an attorney at Law Firm and the president of Taxpayer, sent an email to Accountant 1 with details of the discussion and highlighted the conclusion that a QEF election should be made on Taxpayer's U.S. federal income tax return for Year 1. Accountant 1 prepared and timely filed the income tax return for Year 1 but failed to make the QEF election.

Taxpayer has submitted an affidavit, 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 Accountant 1. Taxpayer has also submitted affidavits of Accountant 1, VP, and Attorney 1 corroborating the representations made by Taxpayer.

Taxpayer represents, 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 1295(a) provides that a 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 with Taxpayer's ruling request, we conclude Taxpayer has satisfied Treas. Reg. §1.1295-3(f). Accordingly, 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 Taxpayer comply

with the rules under Treas. Reg. §1.1295-3(g) regarding the time and manner for making the retroactive QEF election.

This private letter ruling is directed only to the taxpayer 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 Taxpayer's authorized representatives.

Sincerely,

Jeffrey G. Mitchell  
Branch Chief  
(International)