

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:INTL:B02

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Date:

May 06, 2013

TY

Legend

Taxpayer =

FC =

Country X =

Company A =

Money Manager B =

Accountant C =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Year 5 =

Year 6 =

Dear :

This is in response to your letter received by our office on October 4, 2012, 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) with respect to your 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 in the business of investing for its own account and has entered into an investment advisory agreement with Company A pursuant to which Company A was granted complete discretion (including all decisions to purchase and sell) to manage the assets in Taxpayer's account. Taxpayer's main point of contact at Company A was Money Manager B who was granted limited trading authorization for purchases and sales of securities, options, and commodities. Taxpayer is a calendar year taxpayer and uses the cash method of accounting.

Beginning in Year 1, Company A purchased on behalf of Taxpayer shares of FC, a County X corporation. Company A purchased on behalf of Taxpayer more shares of FC in Years 2, 3, 4, 5, and 6. Money Manager B never received a prospectus from FC advising its shareholders that it might be classified as a passive foreign investment company ("PFIC") as defined under section 1297 of the Code.

During the years at issue, Taxpayer engaged the services of Accountant C, a certified public accountant, to prepare its tax returns, including forms, statements, election, and other tax compliance related items. Taxpayer forwarded all documentation received from Company A to Accountant C each year. Taxpayer also made available all other documents in its possession that were requested by Accountant C in order for him to prepare all required tax forms, statements, elections, and other tax compliance items. Accountant C was competent to render U.S. tax advice with respect to stock ownership of a foreign corporation. Also, Accountant C had full access to all the information and facts relating to Taxpayer's ownership of FC stock and Taxpayer relied on the advice of Accountant C with regards to complying with U.S. tax laws.

Neither Money Manager B nor Accountant C identified FC as a PFIC and both failed to advise Taxpayer of the possibility of making, or the consequences of failing to make, a QEF election with respect to FC. Taxpayer recently became aware of FC's status as a PFIC.

Taxpayer has 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 Money Manager B and Accountant C. Taxpayer has also submitted

affidavits from Company A and Money Manager B corroborating the statements 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 to make a retroactive QEF election with respect to FC for Year 1 under Treas. Reg. §1.1295-3(f).

LAW

Section 1295(a) of the Code 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).

The procedural requirements include filing a request for consent to make a retroactive election with, and submitting a user fee to, the Office of the Associate Chief Counsel (International). Treas. Reg. §1.1295-3(f)(4)(i). Additionally, affidavits signed under penalties of perjury must be submitted that describe:

1. the events which led to the failure to make a QEF election by the election due date;
2. the discovery of such failure;
3. the engagement and responsibilities of the qualified tax professional; and
4. the extent to which the shareholder relied on such professional.

Treas. Reg. §§1.1295-3(f)(4)(ii) and (iii).

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 FC 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.

A copy of this ruling must be attached to any tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement attaching a statement to their return that provided the date and control number of the letter ruling.

Sincerely,

Jeffery G. Mitchell
Branch Chief, Branch 2
(International)

cc: