

## Internal Revenue Service

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Department of the Treasury  
Washington, DC 20224

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TY:

### Legend

Taxpayers =

Trust =

Partnership =

Corporation =

Country X =

Firm =

Year 1 =

Date 2 =

Year 3 =

Month 4 =

Dear :

This is in response to a letter dated November 26, 2012 requesting the consent of the Commissioner of the Internal Revenue Service ("Commissioner") to make a retroactive qualified electing fund ("QEF") election under section 1295(b) of the Internal Revenue Code and Treas. Reg. §1.1295-3(f) with respect to Taxpayers' investment in Corporation.

The ruling provided in this letter is 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 the material submitted in support of this request for ruling, such material is subject to verification on examination. The information submitted in the request is substantially as set forth below.

## FACTS

Trust is a domestic trust that was settled by Taxpayers via a trust document executed on Date 2. The Trust is a grantor trust and all of the income, gains, losses and other tax items of the Trust are reportable on Taxpayers' federal income tax returns.

In Year 1, Trust acquired an interest in Partnership, a limited partnership organized under the laws of Country X. To the best of Taxpayers' knowledge, Partnership has never made an entity classification under Treas. Reg. §301.7701-3 and is classified as a partnership under the default entity classification rules of Treas. Reg. §301.7701-3(b)(2)(i)(A). Partnership invested in Corporation, a foreign entity that is understood to be a PFIC within the meaning of sections 1291-1298 of the Code.

The Schedule K-1 provided by Partnership to Trust discloses that Partnership has invested in a PFIC, and state that, as a foreign partnership, Partnership cannot elect to treat the PFIC as a QEF under section 1295 of the Code. The K-1 provided the necessary information to permit Taxpayers to make a QEF election, including their share (through the Trust) of Corporation's ordinary earnings and net capital gains for the year.

Taxpayers had relied upon Firm for over 20 years to advise them with respect to all applicable tax consequences and filing requirements including their investment in Corporation through Trust and to prepare their returns. Firm has been a well-respected accounting firm for more than 50 years with ample expertise in providing tax advice pertaining to the ownership of stock in a foreign corporation. Taxpayers had no professionals other than their tax preparer review their tax returns before filing.

In the course of preparing Taxpayers' Year 3 federal income tax return (on extension), Firm discovered, upon review of the K-1, that Taxpayers owned a PFIC through their ownership of Partnership. Taxpayers were informed of the PFIC issue for the first time in Month 4. Until that time, they were unaware that Corporation was a PFIC.

Taxpayers submitted affidavits, under penalties of perjury, that describe the events that led to their failure to make a QEF election with respect to Corporation by the election due date, including the role of Firm. Taxpayers also submitted an affidavit from Firm, which describes Firm's engagement and responsibilities, and Firm's failure to

provide advice regarding the tax consequences of Taxpayers' ownership of Corporation until Firm was preparing Taxpayers' Year 3 income tax returns.

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

#### RULING REQUESTED

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

#### LAW AND ANALYSIS

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 §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 we conclude that Taxpayers have satisfied Treas. Reg. §1.1295-3(f). Consent is granted to Taxpayers to make a retroactive QEF election with respect to Corporation 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 election.

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

This 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.

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

Sincerely,

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