Internal Revenue Service

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Person To Contact:
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TY:

Legend

Taxpayer =
=

DC =

State Y =

FC =

Country A =

Year 1 =
Year 2 =
Year 3 =
Year 4 =

Date X =

q =

Dear :

This is in response to a letter dated October 9, 2010 and subsequent documentation submitted by Taxpayer that requested the consent of the Commissioner of the Internal Revenue Service ("Commissioner") 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 ruling contained in this letter is based upon information and representations submitted by Taxpayer, and accompanied by a penalties of perjury statement executed by an appropriate party. While this office has not verified any of 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

In Year 1, Taxpayer and others formed a domestic LLC, DC, in State Y, which became a domestic corporation in Year 2. Later in Year 2, DC was re-structured with two classes of stock – Class A and Class B. FC, a Country A foreign corporation, owned the A shares in DC and Taxpayer owned B shares in DC. Taxpayer's B shares were convertible into equivalent shares in FC. Taxpayer owned no shares in FC directly. On Date X in Year 3, Taxpayer converted q shares of his B shares into shares in FC.

Taxpayer was a practicing CPA for all relevant years, providing tax advice as well as the preparation of tax returns in a professional capacity. Taxpayer was aware of his investment in DC, as well as the convertible nature of the B shares and their ultimate conversion into shares of FC, but failed to identify the investment as an interest in a passive foreign investment company (PFIC). During the relevant time period, FC did not provide its U.S. shareholders with any information statements indicating that interests in FC might constitute interests in a PFIC, so Taxpayer was not otherwise notified that his interest in FC was potentially an interest in a PFIC. Because Taxpayer was unaware that his interest in FC constituted an interest in a PFIC, he was likewise unaware of the availability of electing to treat stock in FC as stock in a QEF for the tax year ended in Year 3 and subsequent tax years.

In Year 4, Taxpayer discovered that his interest in FC constituted an interest in a PFIC and took steps to take corrective action.

Taxpayer has submitted an affidavit, under penalties of perjury, describing the events that led to the failure to make the QEF election by the election due date, including his expertise and continuing professional education as a tax professional during the relevant years. Taxpayer represents that, in Year 2 and subsequent years: (1) FC was not identified as a PFIC; and (2) Taxpayer did not receive any advice regarding the availability of a QEF election with respect to his investment in FC.

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 3 under Treas. Reg. §1.1295-3(f).

LAW

Code Section 1295(a) provides that a PFIC will 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 PFIC for the taxable year and (2) the PFIC 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 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 shareholder 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 that 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 3, 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 specifically set forth above, no opinion is expressed or implied concerning the U.S. federal tax consequences of the facts described above under any other provision of the Code.

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

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

Sincerely,

Jeffery G. Mitchell
Chief, Branch 2
(International)