

Internal Revenue Service

Department of the Treasury

Index Number: 9100.18-00

Washington, DC 20224

Number: **199925035**
Release Date: 6/25/1999

Person to Contact:

Telephone Number:

Refer Reply To:

CC:INTL-PLR:121374-98

Date:

March 26, 1999

LEGEND

Parent =

Subsidiary =

CPA Firm =

Individual A =

Individual B =

Individual C =

Dear:

This replies to a letter dated November 17, 1998, in which Subsidiary requests an extension of time under Treas. Reg. § 301.9100-3 to file Form 8279, Election To Be Treated as a FSC or as a Small FSC, as provided by Temp. Treas. Reg. § 1.921-1T(b)(1), Q&A 1, effective for its first taxable year beginning March 11, 1998, and ending December 31, 1998. The information submitted for consideration is substantially as set forth below.

The ruling contained in this letter is predicated upon facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for a ruling. Verification of the factual information, representations, and other data may be required as a part of the audit process.

Individual A is a partner in CPA Firm. During late 1997 and early 1998, CPA Firm

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provided tax consulting services to Parent, and advised Parent of the benefits and requirements of establishing a foreign sales corporation. CPA Firm subsequently assisted Parent with the incorporation of Subsidiary, which took place on March 11, 1998. CPA Firm also informed Parent about the necessity to file on Form 8279 an election to establish a foreign corporation as a FSC within the prescribed period. Parent intended Subsidiary to be created and maintained as a FSC and not a small FSC.

Individual B was the CPA Firm manager who was advising Parent on its FSC issues. Due to the substantial experience of Individual B and the advanced level of his FSC expertise, Individual A did not require Individual B to keep Individual A informed of every communication Individual B had with Parent.

In early April of 1998, Individual B informed Individual A of his departure from CPA Firm. Individual A discussed with Individual B his obligation to ensure that all of his client responsibilities that were not met prior to his departure were communicated to Individual A so that she could reassign them. Individual B left CPA Firm on May 8, 1998.

Individual C is the Vice President of Finance of Parent and the Vice President and Treasurer of Subsidiary. Individual C states that Parent was advised by CPA Firm that filing Form 8279 would be required in order to elect FSC status for Subsidiary. Individual C further states that Individual B indicated that CPA Firm would advise Parent and provide filing instructions prior to the deadline for filing Form 8279. Parent and its officers had no prior experience with the foreign sales corporation provisions of the Internal Revenue Code.

In September of 1998, upon reviewing the status of Subsidiary, Individual C realized that Form 8279 had never been filed. Individual C called a representative of CPA Firm to inquire about the status of Form 8279 and the related consequences. Individual A states that she was unaware the Form 8279 had not been prepared and timely filed for Subsidiary, or that CPA Firm had agreed to instruct Parent on filing Form 8279. The tax return for Subsidiary's first FSC year due on March 15, 1999, had not yet been filed when the ruling request was submitted.

Treas. Reg. § 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the standards set forth in § 301.9100-3 to make a regulatory election under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Treas. Reg. § 301.9100 -1(b) defines a regulatory election as an election whose due date is prescribed by a regulation, a revenue ruling, revenue procedure, notice, or announcement.

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Treas. Reg. § 301-9100-3 provides standards for extensions of time for making regulatory elections when the deadline for making the election is other than a due date prescribed by statute.

Treas. Reg. § 301.9100-3(a) provides that requests for relief subject to this section will be granted when the taxpayer provides the evidence (including affidavits described in § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Treas. Reg. § 301.9100-3(b)(1)(v) provides that, subject to § 301.9100-3(b)(3)(i) through (iii), a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, and the tax professional failed to make, or advise the taxpayer to make, the election.

Treas. Reg. § 1.921-1T(b)(1), Q&A 1, provides that a corporation making an election to be treated as a FSC for its first taxable year must make the election within 90 days after the beginning of that year. Thus, the Commissioner has discretionary authority pursuant to § 301.9100-1(c) to grant Subsidiary an extension of time as requested, provided that Subsidiary acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Based on the facts and circumstances of this case, we conclude that Subsidiary satisfies Treas. Reg. § 301.9100-3(b)(1)(v). Accordingly, Subsidiary is granted an extension of time until 30 days from the date of this ruling letter to file Form 8279 effective for its first taxable year beginning March 11, 1998.

This ruling is directed only to the taxpayer who requested it. I.R.C. § 6110(j)(3) provides that it may not be used or cited as precedent.

No ruling has been requested, and none is expressed, as to the application of any other section of the Code or regulations to the facts presented.

Pursuant to a power of attorney on file in this office, a copy of this letter is being sent to Parent's authorized representatives.

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Sincerely,

Allen Goldstein
Reviewer
Office of the Associate Chief Counsel (International)