

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:INTL:BR2
PLR-154860-05

Date:
January 18, 2006

In Re:

LEGEND

Date 1 =
Taxpayer =

Country X =

Dear :

This is in response to a letter dated September 9, 2005, submitted on behalf of Taxpayer by its authorized representative, requesting an extension of time under Treas. Reg. §§ 301.9100-1 and -3 to elect to be treated as a domestic corporation under 953(d) of the Internal Revenue Code ("Code"), effective for the tax year ending on December 31, 2003, and thereafter. The information submitted for consideration is set forth below.

FACTS

Taxpayer is as an insurance company organized under the laws of Country X on Date 1. Taxpayer failed to make a timely 953(d) election.

Neither Taxpayer nor its shareholders were familiar with the procedural requirements to elect to be treated as a domestic corporation, and relied entirely on various professional advisors to ensure that the corporation would be organized in a manner consistent with the Taxpayer's best interests. Nevertheless, Taxpayer's advisors failed to timely elect treatment as a domestic corporation.

Taxpayer requests an extension of time to make the section 953(d) election before its failure to make the election was discovered by the Internal Revenue Service.

Taxpayer represents that none of the disqualifying conditions described in Treas. Reg. § 301.9100-3(b)(3) have occurred.

LAW

Section 953(d) provides that a foreign insurance company may elect to be treated as a domestic corporation.

Rev. Proc. 2003-47, 2003-2 C.B. 55, provides that, in the case of a corporation making an election to be treated as a domestic corporation, such election shall be made by the due date prescribed under section 6072(b).

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

Treas. Reg. § 301.9100-1(b) provides that an election includes an application for relief in respect of tax, and defines a regulatory election as an election whose due date is prescribed by a regulation, a revenue ruling, revenue procedure, notice, or announcement.

Treas. Reg. § 301.9100-3(a) provides that requests for relief will be granted when the taxpayer provides the evidence (including affidavits described in Treas. Reg. § 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) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer –

- (i) Requests relief before the failure to make the regulatory election is discovered by the IRS;
- (ii) Failed to make the election because of intervening events beyond the taxpayer's control;
- (iii) Failed to make the election because, after exercising reasonable diligence, the taxpayer was unaware of the necessity for the election;
- (iv) Reasonably relied on the written advice of the IRS; or
- (v) Reasonably relied on a qualified tax professional, and the tax professional failed to make, or advise the taxpayer to make, the election.

Treas. Reg. § 301.9100-3(b)(3) provides that a taxpayer is deemed to have not acted reasonably or in good faith if the taxpayer –

- (i) Seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662 at the time the taxpayer requests relief and the new position requires or permits a regulatory election for which relief is requested;
- (ii) Was informed in all material respects of the required election and related tax consequences, but chose not to file the election; or
- (iii) Uses hindsight in requesting relief. If specific facts have changed since the due date for making the election that make the election advantageous to a taxpayer, the IRS will not ordinarily grant relief. In such a case, the IRS will grant relief only when the taxpayer provides strong proof that the taxpayer's decision to seek relief did not involve hindsight.

ANALYSIS

The time and manner of making an election under section 953(d) is prescribed by Rev. Proc 2003-47. Because section 953(d) falls within subtitle A of the Code, it is within the Commissioner's discretion to grant a taxpayer a reasonable extension of time to make such an election. Based on Taxpayer's affidavit, we conclude that Taxpayer acted reasonably and in good faith because relief was requested before the failure to make the regulatory election was discovered by the IRS. Additionally, we conclude that the granting of an extension of time to make the election will not prejudice the interests of the Government. See Treas. Reg. § 301.9100-3(c).

CONCLUSION

Taxpayer is granted an extension of time until 60 days from the date of this letter ruling to make an election under section 953(d) election to be treated as a domestic corporation.

The Taxpayer should attach a copy of this letter ruling to its federal income tax return for the relevant year.

This ruling is directed only to the taxpayer who requested it. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,
Valerie Mark Lippe
Senior Technical Reviewer
International, Branch 2
Office of Chief Counsel