

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

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Person To Contact:

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PLR-144459-05

Date:

February 24, 2006

TY:

LEGEND:

Taxpayer =

Law Firm A =

Consulting Firm B =

Accounting Firm C =

Country Y =

Date 1 =

Year X =

Z =

Dear :

This is in response to a letter dated August 22, 2005, submitted on behalf of Taxpayer by its authorized representative, requesting an extension of time under Treas. Reg. § 301.9100-3 to make the election provided by Internal Revenue Code (I.R.C.) section 953(d) to be treated as a domestic corporation for U.S. tax purposes commencing on the first day of Taxpayer's Year X taxable year.

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 a part of the audit process.

Taxpayer is a Country Y captive insurance company that was incorporated on Date 1. Taxpayer insures the risks of Law Firm A and Consulting Firm B. Since its formation, Taxpayer has been owned equally by varying employees of Law Firm A and Consulting Firm B. Each shareholder has owned approximately a Z percent interest in Taxpayer.

Taxpayer employed a consulting firm to form the company and to provide advice with regard to U.S. income tax issues upon the formation of the company. Further, it also employed the predecessor of Accounting Firm C to perform an audit of Taxpayer's financial statements and to provide tax advice. At that time, it was clear that Taxpayer was not a controlled foreign corporation ("CFC"). However, Congress thereafter passed legislations which modified the general definition of a CFC and U.S. shareholder in the context of captive insurance companies. Taxpayer was unaware of the legislative modifications and its effect on its status as a CFC. As a result, Taxpayer continued to take the position that it was not a CFC.

Taxpayer has represented that it does not believe it is seeking to alter a return position for which an accuracy-related penalty could be imposed on its shareholders under I.R.C. section 6662. Further, absent an election, Taxpayer is not subject to U.S. income tax or accuracy-related penalties.

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 I.R.C., 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) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer:

- i. requests relief under this section before the failure to make the regulatory election is discovered by the Internal Revenue Service;

- 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 (taking into account the taxpayer's experience and the complexity of the return or issue), 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, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

However, Treas. Reg. § 301.9100-3(b)(3) provides that a taxpayer is deemed not to have acted reasonably and in good faith if the taxpayer seeks to alter a return position for which an accuracy- related penalty has been or could be imposed under I.R.C. section 6662 at the time the taxpayer requests relief and the new position requires or permits a regulatory election for which relief is requested, or if the taxpayer was informed in all material respects of the required election and related tax consequences but chose not to file the election. Furthermore, a taxpayer will not be considered to have acted reasonably and in good faith if the taxpayer uses hindsight in requesting relief.

Section 4.04(2) of Rev. Proc. 2003-47, 2003-2 C.B. 55, provides that the election to be treated as a domestic corporation under 953(d), to be effective for a taxable year, must be filed by the due date prescribed in I.R.C. section 6072(b) (with extensions) for the United States income tax return that is due if the election becomes effective.

In the present situation, Rev. Proc. 2003-47 fixes the time to make the election under I.R.C. section 953(d). Therefore, the Commissioner has discretionary authority under Treas. Reg. § 301.9100-1(c) to grant Taxpayer an extension of time, provided that Taxpayer satisfies the standards set forth under Treas. Reg. § 301.9100-3(a).

Based on the facts and information submitted, we conclude that Taxpayer satisfies Treas. Reg. § 301.9100-3(a). Accordingly, Taxpayer is granted an extension of time of 60 days from the date of this ruling letter to make the election provided by I.R.C. section 953(d) in accordance with the rules set forth in Notice 89-79, 1989-2 C.B. 392, and Rev. Proc. 2003-47, to be treated as a domestic corporation for U.S. tax purposes commencing on the first day of Taxpayer's Year X taxable year.

The granting of an extension of time is not a determination that Taxpayer is otherwise eligible to make the section 953(d) election. Treas. Reg. § 301.9100-1(a).

The Taxpayer should attach a copy of this letter to its section 953(d) election.

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

Pursuant to a power of attorney on file in this office, a copy of this ruling letter is being furnished to your authorized representatives.

Sincerely,

Valerie A. Mark Lippe
Senior Technical Reviewer, Branch 2
(International)