

**Internal Revenue Service**

Department of the Treasury  
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Person To Contact:  
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PLR-129060-05

Date:  
May 04, 2006

LEGEND:

Taxpayer =

Company A =

Company B =

Company C =

Company D =

Accounting Firm E =

Accounting Firm F =

Country Y =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Year 1 =

Year 2 =

Dear :

This is in response to a letter received by our office on May 5, 2005, and supplemental correspondence dated March 20, 2006 and April 3, 2006, submitted by Taxpayer requesting an extension of time under Treas. Reg. § 301.9100-3 to make the election provided by 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 2 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 wholly owned subsidiary of Company A, a Country Y corporation. Company A is owned equally by Company B and Company C, both U.S. domiciled businesses. Taxpayer is a Country Y licensed insurance corporation that was incorporated on Date 1 and began its operations on Date 2.

Because neither Company B nor Company C had any presence in Country Y, or local-country legal knowledge, Taxpayer hired Company D to provide day-to-day management services for Taxpayer in Country Y. This appointment was confirmed at a Board meeting held on Date 3. At that meeting, Taxpayer's Board resolved that Taxpayer would make the section 953(d) election by filing an election statement with the IRS when filing its corporate income tax for that year and that Accounting Firm E would file all necessary tax returns. Company D was charged with retaining Accounting Firm E for audit and tax return preparation. Under Country Y's law, Country Y's Monetary Authority can grant an audit waiver for insurance companies that have a short initial period (fewer than 6 months). Country Y's Monetary Authority did grant such a waiver. As a result, Company D did not engage Accounting Firm E to perform an audit of Taxpayer's Year 1 short initial period. Further, Company D did not consider, or mention to Accounting Firm E the need to separately prepare Taxpayer's Year 1 U.S. federal income tax return.

Relying on the advice of Accounting Firm F, Taxpayer filed an election statement dated Date 4, to make a domestic election under section 953(d) effective as of the first date of Taxpayer's Year 1 taxable year. The election statement was filed after the due date for making the section 953(d) election for the Year 1 taxable year but before the due date for making the election for the Year 2 taxable year.

Prior to requesting an extension of time under Treas. Reg. § 301.9100-3, Taxpayer filed its Year 1 and Year 2 U.S. federal income tax return on the assumption that the Internal Revenue Service would grant Taxpayer permission to make an election under section 953(d) for those years.

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.

Notice 89-79, 1989-2, C.B. 392 and Rev. Proc. 2003-47, 2003-2 C.B. 55, provide 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, Notice 89-79 and Rev. Proc. 2003-47 fix the time to make the election under 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 § 301.9100-3(a).

In this case, Taxpayer relied on Accounting Firm F who advised Taxpayer to make the section 953(d) election for the Year 1 taxable year after the due date for making the

election. Although the election would have been timely for the Year 2 taxable year, Accounting Firm F failed to advise Taxpayer to request that the election be effective for the Year 2 taxable year.

Based on the facts and information submitted, we conclude that Taxpayer satisfies Treas. Reg. § 301.9100-3(a) for Year 2. 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 procedural rules set forth in Notice 89-79 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 2 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 ruling to its federal income tax return for the relevant year.

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 Mark Lippe  
Senior Technical Reviewer, Branch 2  
Office of the Associate Chief Counsel  
(International)