

**Internal Revenue Service**

Department of the Treasury

Washington, DC 20224

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Person To Contact:

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Date:

September 22, 2011

TY:

Legend

Fund 1 =

Fund 2 =

Trust =

State A =

FC =

Year 1 =

Year 2 =

Year 3 =

Accounting Firm 1 =

A =

B =

Accounting Firm 2 =

Date 1 =

Date 2 =

Date 3 =

Dear :

This is in response to a letter received by our office on April 13, 2011, submitted on behalf of Fund 1 and Fund 2 (collectively the "Funds") by the Funds' authorized representative, requesting an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make a mark to market election under section 1296 of the Internal Revenue Code ("Code").

The rulings contained in this letter are based upon information and representations submitted by the Funds and accompanied by a penalty of perjury statement executed by appropriate parties. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

## FACTS

Trust was organized as a State A trust that is registered as an open-end management investment company under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., as amended, and its shares are registered under the Securities Act of 1933, as amended.

With regard to the Funds, each is a duly designated and established segregated portfolio of assets of Trust and is a “fund” as defined in section 851(g)(2) of the Code, and accordingly is treated as a separate corporation for federal income tax purposes pursuant to section 851(g)(1) (except with respect to the definitional requirement of section 851(a)). Further, each fund is taxed as a regulated investment company under Subchapter M of the Code.

The Funds acquired shares in FC in Year 1 and continuously held such shares (together with additional tax lots in FC purchased by the Funds subsequent to Year 1) until the shares were sold in Year 3.

For the taxable year ended December 31, Year 2, the Funds contracted with Accounting Firm 1, the Funds’ independent accountants, to prepare their U.S. federal income tax returns on Form 1120-RIC. Accounting Firm 1 disclaims any responsibility for determining the status of a security as a PFIC.

For the taxable year ended December 31, Year 2, the Funds also contracted with A under a Fund Administration and Transfer Agency Agreement to provide tax administrative services. A, in turn, contracted with B under a Sub-Administration Agreement, dated Date 1, Year 2 and effective Date 2, Year 2, to provide certain fund sub-administration and sub-transfer agency services for each Fund. One of the services included providing sufficient information to Accounting Firm 1 for it to complete the Funds’ federal income tax returns, including making the mark to market elections pursuant to section 1296(a).

To provided such services, A and B employ tax accountants who are competent to render tax advice with respect to stock ownership of a foreign corporation and, in particular, are highly experienced in recommending relevant tax elections to the Funds with respect to PFICs.

The Funds have no employees and relied exclusively on B, with oversight by A, to identify the holdings of the Funds that qualify as PFICs, including FC, and to communicate that information to Accounting Firm 1 in connection with Accounting Firm 1's preparation of the Funds' income tax returns.

Trust contracted with Accounting Firm 2 to ascertain the status of portfolio securities as PFICs and, consistent with industry practice, it is Trust's practice to make a section 1296 election for identified PFICs. For Year 2, Accounting Firm 2 did not identify FC as a PFIC. On or about Date 3, Year 3, Accounting Firm 2 alerted B that, based on its review of the Year 2 annual report for FC, the company's passive assets exceeded the 50% threshold of section 1297(a)(2) and as a result, FC qualifies as a PFIC as of December 31, Year 2. B, however, failed to forward the updated list of the Funds' PFICs with revised income tax provision calculations to reflect the mark to market adjustment with respect to FC to Accounting Firm 1. As a result, Accounting Firm 1 did not make a mark to market election under section 1296 with respect to FC on the Funds' Year 2 federal income tax return.

The Funds have submitted affidavits, signed under penalties of perjury in support of this ruling request. In addition, the Funds have made the following representations for the 1296 election:

1. The request for relief was filed by the Funds before the failure to make the regulatory election was discovered by the IRS.
2. Granting the relief will not result in the Funds having a lower tax liability in the aggregate for all years to which the regulatory election applies than that the Funds would have had if the election had been made timely (taking into account the time value of money).
3. The Funds did not seek to alter a return position for which an accuracy-related penalty has been or could have been imposed under section 6662 of the Code at the time the Funds requested relief and the new position requires or permits a regulatory election for which relief is requested.
4. Being fully informed of the required regulatory election and related tax consequences, the Funds did not choose to not file the election.
5. As of the date of this request for ruling, the PFIC status of FC has not been raised by the IRS on audit for the taxable year at issue.

LAW

Section 1296(a) provides that, in the case of marketable stock in a passive foreign investment company that is owned by a U.S. person at the close of any taxable year, the person may elect to include in gross income the excess of the fair market value of the stock over its adjusted basis.

Treas. Reg. §1.1296-1(h) provides that an election under section 1296 for a taxable year must be made on or before the due date (including extensions) of the person's U.S. income tax return for that year.

Treas. Reg. §301.9100-1(c) provides that the Commissioner has the 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, 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; or
- (iv) reasonably relied on a qualified tax professional, and the tax professional failed to make, or advise the taxpayer to make, the election.

## CONCLUSION

Based on the information and representations submitted, we conclude that the Funds satisfy the requirements for a reasonable extension of time to make the mark to market election under section 1296 of the Code. Accordingly, the Funds are granted an extension of time of 60 days from the date of this letter to make the election under

section 1296, with respect to the stock of FC, for the Fund's taxable year ending on December 31, Year 2.

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

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Jeffery G. Mitchell  
Branch Chief, Branch 2  
(International)

cc: