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Department of the Treasury

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Person To Contact:

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Telephone Number:

Refer Reply To:

CC:INTL:B02

PLR-104735-11

Date:

July 27, 2012

TY:

Legend

Taxpayer =

State X =

Funds =

Adviser =

B =

Accounting Firm =

Year 1 =

FC1 =

FC2 =

Dear :

This is in response to a letter received by our office on February 3, 2011, submitted on behalf of Taxpayer by its authorized representative, requesting an extension of time under Treas. Reg. §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make a mark to market election under I.R.C. § 1296.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. 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

Taxpayer is State X corporation and 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 (the 1940 Act). Taxpayer is a diversified series of Funds. Taxpayer is a “fund” as defined in section 851(g)(2), 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)). Finally, Taxpayer is taxed as a regulated investment company under subchapter M of the I.R.C.

Taxpayer is managed by Adviser and Taxpayer has contracted B to provide it with certain administrative services and facilities. B is responsible for, among other things, assisting in the preparation of Taxpayer’s filings required to maintain Taxpayer’s qualifications and to satisfy applicable federal and state tax requirements. To provide such services, B employs 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 preparing income and excise tax returns and in recommending relevant tax elections to Taxpayer.

For Year 1, Adviser, despite the assistance from Accounting Firm, failed to identify FC1 and FC2 as passive foreign investment companies (“PFICs”). As a result, B failed to make the mark to market election under section 1296 for Year 1 with respect to FC1 and FC2 and failed to advise Taxpayer of the consequences of making or failing to make such an election.

Taxpayer has submitted affidavits from its Assistant Treasurer and Director – Fund Tax, in support of this ruling request.

Taxpayer has made the following additional representations:

1. The request for relief was filed by Taxpayer before the failure to make the regulatory election was discovered by the IRS.
2. Granting the relief will not result in Taxpayer having a lower tax liability in the aggregate for all years to which the regulatory election applies than Taxpayer would have had if the election had been made timely (taking into account the time value of money).
3. Taxpayer did not seek to alter a return position for which an accuracy-related penalty has been or could have been imposed under section 6662 at the time it requested relief and the new position requires or permits a regulatory election for which relief is requested.

4. Taxpayer did not choose to not file the election after being fully informed of the required regulatory election and related tax consequences.
5. The elections requested will not affect any closed tax year.
6. Taxpayer is not using hindsight in requesting relief under Treas. Reg. § 301.9100-3 and no specific facts have changed since the due date for making the elections which would make elections advantageous to Taxpayer.

LAW

Section 1296(a) provides that, in the case of marketable stock in a passive foreign investment company that is owned by a United States 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 Taxpayer satisfies the requirements for a reasonable extension of time to make the mark to market election under section 1296 of the Code. Accordingly, Taxpayer is 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 FC1 and FC2, for its taxable year ending on December 31, Year 1.

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 taxpayer's first representative.

Sincerely,

Jeffery G. Mitchell
Branch Chief
(International)

cc: