

Trust engaged Manager to perform overall supervision and management services for Fund. In that capacity, Manager engaged Accountant 1 to prepare Fund's federal income tax returns and Accountant 2 to review Fund's federal income tax returns. Accountant 1 has provided tax compliance services and has prepared Fund's federal income tax returns since Fund's inception on Date 1. On Date 3, Manager hired Accountant 3 to replace Accountant 2 as the reviewer of Fund's federal income tax returns.

For the tax year ended Date 2 (Tax Year 1), Fund filed a timely request for an extension of time to file Form 7004, Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns until Date 5.

After the close of Tax Year 1, Fund declared dividends which it paid prior to any other regular dividend following the declaration. On its Tax Year 1 Form 1120-RIC, U.S. Income Tax Return for Regulated Investment Companies (Fund's 1120-RIC), Fund intended to make an election under section 855(a) and accordingly treated those dividends declared and distributed in accordance with the limitations set forth in section 855(a)(1) and (2), respectively, as having been paid during Tax Year 1.

A few days prior to Date 5, the extended due date of Fund's 1120-RIC, a senior manager at Accountant 3 signed, as preparer, Fund's 1120-RIC and forwarded it via next day mail to Manager, addressed to the Secretary and Treasurer of Fund. The CFO of Manager, who is also the Secretary and Treasurer of Fund, received the package from Accountant 3 on Date 4. In tax years prior to Tax Year 1, an employee of Accountant 2 had signed Fund's return as the preparer and forwarded it to a director of Manager for signature and filing. Because Accountant 3 and the CFO of Manager were unaware of the process used by Accountant 2 and the director of Manager, Fund's 1120-RIC was not timely filed. The CFO of Manager assumed Accountant 3 had filed Fund's 1120-RIC and that the delivery from Accountant 3 was a copy for the files. Consequently, the CFO of Manager did not open the package until after Date 5 and Fund's 1120-RIC was not timely filed. Fund's 1120-RIC was filed on or about Date 6.

When the CFO of Manager realized that Fund's 1120-RIC had not been timely filed, he promptly contacted Accountant 3 and filed this letter ruling request.

Fund has submitted the affidavit of the CFO of Manager/Secretary and Treasurer of Fund and the affidavit of an employee of Accountant 3 in support of this requested ruling.

The following representations are made in connection with the request for an extension of time:

1. The request for relief was filed before the failure to make the regulatory election was discovered by the Service.
2. Granting the relief requested will not result in Fund having a lower tax liability in the aggregate for all years to which the election applies than it would have had if the election had been timely made (taking into account the time value of money).
3. Fund does 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. Being fully informed of the required regulatory election and related tax consequences, Fund did not choose to not file the election.
5. Fund is not using hindsight by basing this request on knowledge of events occurring after the due date of the election.
6. No intervening events have occurred to make the election more advantageous to Fund.

LAW AND ANALYSIS

Section 855(a) provides that, if a RIC declares a dividend prior to the time prescribed by law for the filing of its return for a taxable year (including the period for any extension of time granted for filing such return), and distributes the amount of such dividend to shareholders in the 12-month period following the close of such taxable year and not later than the date of the first regular dividend payment made after such declaration, the amount so declared and distributed shall, to the extent the company elects in such return in accordance with regulations prescribed by the Secretary, be considered as having been paid during such taxable year, except as provided in subsections (b), (c), and (d).

Section 301.9100-1(c) of the Procedure and Administration Regulations provides that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I. Section 301.9100-1(b) defines a regulatory election as an election whose due date is prescribed by regulations or by a revenue ruling, a revenue procedure, a notice, or an announcement published in the Internal Revenue Bulletin.

Section 301.9100-3(a) through (c)(1)(i) sets forth rules that the Service generally will use to determine whether, under the facts and circumstances of each situation, the Commissioner will grant an extension of time for regulatory elections that do not meet the requirements of section 301.9100-2. Section 301.9100-3(a) provides that requests for relief subject to this section will be granted when the taxpayer provides the evidence (including affidavits described in section 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.

Section 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 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 Service; 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. Moreover, a taxpayer will be deemed not to have acted 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.

Section 301.9100-3(c) provides that a reasonable extension of time to make a regulatory election will be granted only when the interests of the government will not be prejudiced by the granting of relief. Section 301.9100-3(c)(i) provides that the interests of the government are prejudiced if granting relief would result in the taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made (taking into account the time value of money). Section 301.9100-3(c)(ii) provides that the interests of the government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made or any taxable years that would have been affected by the election had it been timely made are closed by the period of limitations on assessment under section 6501(a) before the taxpayer's receipt of a ruling granting relief under this section.

CONCLUSION

Based upon the facts and representations submitted, we conclude that Fund has shown good cause for granting a reasonable extension of time to make an election under section 855(a). Since Fund filed its 1120-RIC on or about Date 6, Fund's election

to treat dividends declared and distributed in accordance with section 855 for Tax Year 1, as described in this letter, will be treated as having been timely made, despite having been made after the due date prescribed for making the election.

This ruling is limited to the timeliness of the filing of Fund's election under section 855(a). This ruling's application is limited to the facts, representations, Code sections, and regulations cited herein. No opinion is expressed regarding any material item or representation on Fund's Form 1120-RIC. Furthermore, no opinion is expressed regarding whether Fund qualifies as a RIC.

No opinion is expressed with regard to whether the tax liability of Fund is not lower in the aggregate for all years to which the election applies than such tax liability would have been if the election had been timely made (taking into account the time value of money). Upon audit of the federal income tax returns involved, the director's office will determine such tax liability for the years involved. If the director's office determines that such tax liability is lower, that office will determine the federal income tax effect.

Except as specifically provided otherwise, no opinion is expressed on the federal income tax consequences of the transaction described above.

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

Sincerely,

Susan Thompson Baker
Susan Thompson Baker
Senior Technician Reviewer, Branch 2
Office of Associate Chief Counsel
(Financial Institutions & Products)