

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:

Telephone Number:

Refer Reply To:
CC:FIP:BO2
PLR-118190-16
Date:
October 26, 2016

Legend:

Funds

Administrator

Life Insurance Company

Auditor

Accounting Firm

Year 1

Year 2

Year 3

Year 4

Year 5

Month

Dear _____ :

This responds to a letter dated June 6, 2016, submitted on behalf of Funds (collectively, "Taxpayers"). Taxpayers request an extension of time under § 301.9100-1 and § 301.9100-3 of the Procedure and Administration Regulations ("the regulations") to make an election under § 853 of the Internal Revenue Code ("Code") for Years 1, 2, 3, and 4.

Facts

Taxpayers are regulated investment companies (RICs) wholly owned by Life Insurance Company. Each taxpayer uses the calendar year as its taxable year. In a structure commonly used in the industry, Life Insurance Company owns shares in Taxpayers through ownership of separate accounts that invest directly in Taxpayers.

Taxpayers own shares in other RICs within a fund of funds structure. During the taxable years for which relief is sought, certain of the RICs in which Taxpayers invest (the "Underlying RICs") qualified under section 853 of the Code to elect the benefits of that section to pass through the benefit of foreign tax credits to Taxpayers, their shareholders.

Administrator, a wholly owned subsidiary of Life Insurance Company, provides administrative services for Taxpayers. Administrator established procedures to analyze foreign taxes paid by RICs in which Life Insurance Company holds shares. Under these procedures, a staff member of Administrator analyzes and prepares a schedule of foreign taxes paid by each RIC within the fund of funds structure that is eligible to make the section 853 election.

Auditor is an independent accounting firm that provides tax compliance and audit services to Administrator and to Taxpayers. Auditor oversees a team of tax professionals that provides tax compliance review as part of its financial statement audits. Auditor reviewed the federal and state income tax returns prepared by

Administrator in Year 2 and prepared and reviewed federal and state tax returns in Years 3 and 4. In Years 3 and 4, Auditor prepared Taxpayers' returns in accordance with annual workpapers provided by Administrator.

The Underlying RICs provided Administrator with written statements containing information required under section 853 to be furnished to shareholders in order to effect a valid election under that section. The written statements were received by an individual on Administrator's tax team who failed to elevate them to appropriate personnel on Administrator's tax team. As a result, the written statements were not included in the annual workpapers provided by Administrator to Auditor. Auditor was therefore not aware that Taxpayers had the opportunity, in their turn, to elect on a timely filed return to pass through to Taxpayers' sole shareholder, Life Insurance Company, the benefit of the foreign tax credits attributable to foreign taxes paid by the Underlying RICs.

While performing a routine review, Administrator's tax team identified the fact that Taxpayers had not made a timely election to pass through foreign tax credits to its shareholder, Life Insurance Company. In Month of Year 5, an officer of Administrator notified Auditor of the missed election and surrounding circumstances. This officer attests that if he or appropriate members on his tax team had been aware of the letters sent by Underlying Funds to Taxpayers, action would have been taken to ensure that Taxpayers elected to pass through the foreign tax credits on their returns for the years for which relief is sought. For each year for which relief is sought, Taxpayers represent that Life Insurance Company had sufficient foreign source income to fully utilize the foreign tax credits not passed through from Funds. For each year for which relief is sought, Taxpayers further represent that the utilization of the foreign tax credit would provide a more favorable tax result than the deduction of the foreign taxes by Life Insurance Company.

Upon learning of the missed election, Auditor contacted Accounting Firm in Month of Year 5 to discuss and determine the course of action to be taken. Accounting Firm recommended that Taxpayers seek relief under § 301.9100-1 and § 301.9100-3 of the regulations to make late elections under section 853 for Years 1, 2, 3, and 4, which recommendation led to the filing of the present request.

As of the date of filing of the present request, Year 1 was closed by the period of limitations on assessment under section 6501(a). Years 2, 3, and 4 were not closed by the period of limitations on assessment under section 6501(a).

In support of their letter ruling request, Taxpayers submit affidavits from Auditor and Administrator as required by § 301.9100-3(e) of the regulations.

In addition, as required by § 301.9100-3(c)(1)(ii) of the regulations, relating to closed years, Taxpayers submit an affidavit from an independent auditor (other than an auditor providing an affidavit pursuant to § 301.9100-3(e)(3)) certifying that the interests

of the Government are not prejudiced under the standards set forth in § 301.9100-3(c)(1)(i) of the regulations. This affidavit attests that Taxpayers, the Funds, if granted relief will not have a lower tax liability in the aggregate for all taxable years affected by the election than they would have had if the election had been timely made (taking into account the time value of money). The affidavit further attests that Life Insurance Company, Taxpayers' shareholder, will not have a lower tax liability than if the election had been timely made (taking into account the time value of money). Finally, the affidavit attests that the tax liabilities of the Underlying RICs are unaffected by the request filed.

Taxpayers make the following additional representations:

1. The request for relief was filed by Taxpayers before the failure to make the regulatory elections was discovered by the Service.
2. Taxpayers do not seek to alter a return position for which an accuracy-related penalty has been or could have been imposed under § 6662 at the time Taxpayers requested relief and the new position requires or permits a regulatory election for which relief is requested.
3. Being fully informed of the required regulatory elections and related tax consequences, Taxpayers did not choose to not file the elections.
4. Granting the relief will not result in Taxpayers or their sole shareholder, Life Insurance Company, having a lower tax liability in the aggregate for all years to which the regulatory elections apply than Taxpayers or Life Insurance Company would have had if the elections had been timely made (taking into account the time value of money).
5. Taxpayers are not using hindsight in requesting relief because no specific facts have changed since the due date for making the elections that would make the elections more advantageous to Taxpayers.

Law and Analysis

Section 853(a) of the Code provides that a RIC, more than 50 percent of the value of whose total assets at the close of the taxable year consist of stock or securities in foreign corporations, and which meets the requirements of section 852(a) for the taxable year, may elect the application of §853 for the taxable year with respect to certain taxes paid by the RIC during the taxable year to foreign countries and possessions of the United States.

Section 853(b)(1) of the Code provides that the effect of the election is to deny an electing RIC any deduction under §164(a) or any credit under section 901 for these

taxes. The electing RIC is allowed an addition to its dividends paid deduction for the taxable year for the amount of these taxes.

Section 853(b)(2) of the Code further describes the effect of the election by providing that each shareholder of the RIC shall include in gross income and treat as paid by him his proportionate share of these taxes. Each shareholder shall treat as gross income from sources within the respective foreign countries and possessions of the United States the sum of his proportionate share of these taxes and the portion of any dividend paid by the RIC which represents income derived from sources within foreign countries and possessions of the United States.

Section 853(c) provides that the amount to be treated by the shareholder as his proportionate share of taxes paid to any foreign country or possession of the United States, and gross income derived from sources within any foreign country or possession of the United States, shall not exceed the amounts so reported by the RIC in a written statement furnished to the shareholder.

Section 852(g) provides a special rule for a fund of funds in this context. A qualified fund of funds, defined under § 852(g)(2) as a RIC, at least 50 percent of whose assets at the close of each quarter of the taxable year is represented by interests in other RICs, may elect the application of § 853 without regard to the requirement that more than 50 percent of the value of its total assets at the close of the taxable year consist of stock or securities in foreign corporations .

Section 1.853-4(a) and (b) of the Income Tax Regulations provide that an election under § 853 must be made not later than the time prescribed for filing the return (including extensions thereof), and is irrevocable with respect to the dividend (or portion thereof), and the foreign taxes paid with respect thereto, to which the election applies. Section 1.853-4(c) of these regulations requires that certain information pertinent to the election, including the date, form and contents of its notice to its shareholders, shall accompany the RIC's timely filed federal income tax return for the taxable year on or with a modified Form 1118, *Foreign Tax Credit—Corporations*.

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 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) sets forth rules that the Service generally will use to determine whether, under the particular facts and circumstances of each situation, the Commissioner will grant an extension of time for regulatory elections that do not meet the requirements for automatic extensions under § 301.9100-2. Section

301.9100-3(b) provides that, subject to paragraphs (b)(3)(i) through (iii) of § 301.9100-3, when a taxpayer applies for relief under this section before the failure to make the regulatory election is discovered by the Service, the taxpayer will be deemed to have acted reasonably and in good faith.

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). Similarly, if the tax consequences of more than one taxpayer are affected by the election, the Government's interests are prejudiced if extending the time for making the election may result in the affected taxpayers, in the aggregate, having a lower tax liability than if the election had been timely made.

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 § 6501(a) before the taxpayer's receipt of a ruling granting relief under this section. The IRS may condition a grant of relief on the taxpayer providing a statement from an independent auditor (other than an auditor providing an affidavit pursuant to paragraph (e)(3) of § 301.9100-3) certifying that the interests of the Government are not prejudiced under the standards set forth in paragraph (c)(1)(i) of § 301.9100-3.

Conclusion

Based on the information submitted and representations made, we conclude that Taxpayers have satisfied the requirements for granting a reasonable extension of time to make an election under § 853 for Years 1, 2, 3, and 4. Accordingly, each Taxpayer has 90 days from the date of this letter to file its intended election.

This ruling is limited to the timeliness of the filing of the election under § 853. This ruling's application is limited to the facts, representations, Code sections, and regulations cited herein. Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

No opinion is expressed with regard to whether the tax liability of each Taxpayer or of Life Insurance Company 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.

The ruling contained in this letter is based upon information and representations submitted by Taxpayers and accompanied by a penalty of perjury statements 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.

This ruling is directed only to the taxpayers requesting 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 representatives.

Sincerely,

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

Enclosure (2):

Copy of this letter
Copy of section 6110 purposes