

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
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PLR-121507-16

Date:
November 21, 2016

Legend:

Fund =

State =
Date 1 =
Date 2 =
Date 3 =
Date 4 =
Date 5 =
Advisor =
Accountant =

Dear :

This is in reply to a letter dated July 6, 2016, and supplemental correspondence, requesting an extension of time under sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations for Fund to make an election under section 853(a) of the Internal Revenue Code (the Code).

FACTS

Fund is a State statutory trust registered as an open-end diversified management investment company under the Investment Company Act of 1940, 15 U.S.C. section 80a-1, et seq., as amended (the 1940 Act). Fund elected to be taxed as a regulated investment company (RIC) pursuant to section 851 effective for its initial taxable year ended Date 1 and has operated in a manner intended to qualify as a RIC ever since.

Fund intended to make an election under section 853 to have its shareholders treated as if they had paid their proportionate share of certain foreign taxes paid by Fund for the taxable year ended Date 3. Fund made the election under section 853 for the taxable year ended Date 2 (the prior taxable year). Additionally, Fund represents that it provided notice to its shareholders of the election in the annual report for the year ended Date 3, which was provided to shareholders within 60 days of year end.

For the taxable year ended Date 3, Fund intended to file a Form 7004, Application for Automatic 6-Month Extension of Time to File Certain Business Income Tax, Information, and Other Returns (Form 7004), to extend the due date of its Form 1120-RIC, U.S. Income Tax Return for Regulated Investment Companies (Form 1120-RIC). As discussed below, the Form 7004 was not filed. Therefore, the election was due Date 4, the due date, without extensions, of the Form 1120-RIC for the taxable year ended Date 3.

Fund engaged Advisor as its investment advisor and tax matters administrator. Advisor engaged Accountant to prepare both the Form 1120-RIC and Form 7004. Accountant generally prepares the Form 7004 and mails it to the Internal Revenue Service (the Service) via certified mail prior to the due date for filing the return. Accountant timely drafted the Form 7004 and notified Fund that it had been filed. However, on Date 5, when Accountant attempted to match the sender receipt with a return receipt so that it could enter the certified mail receipts in the client electronic file, Accountant discovered that Fund's Form 7004 had not been mailed. Accountant immediately notified the client that Fund's return for the taxable year ended Date 3 had not been extended.

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. 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 of the Code.
3. Fund did not choose not to make the election after being informed in all material respects of the required election and related tax consequences.
4. Fund is not using hindsight in making the decision to seek the relief requested. No specific facts have changed since the due date for making the election that make the election more advantageous to Fund now than it would have been had the election been timely made.

5. Granting an extension of time to make the election will result in the same aggregate tax liability with respect to all affected taxpayers as would have resulted had the election been timely made.
6. All taxable years affected by the election are open under the statute of limitations.

In addition, affidavits on behalf of Fund have been provided as required by sections 301.9100-3(e)(2) and (3) of the Procedure and Administration Regulations.

LAW AND ANALYSIS

Section 853(a) of the Code provides that if more than 50 percent of the value—as defined in section 851(c)(4)—of a RIC's total assets at the close of the taxable year consists of stock or securities in foreign corporations and the RIC meets the requirements of section 852(a) for the taxable year, the RIC may elect to have its shareholders treated as if they had paid their proportionate share of certain foreign taxes paid by the RIC during the taxable year.

Under section 1.853-4(a) of the Income Tax Regulations, to make an election under section 853(a) for a taxable year, a RIC must file a statement of election as part of its federal income tax return for the taxable year. Section 1.853-4(b) provides that this election must be made no later than the time prescribed for filing the return (including extensions), 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 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 six 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, revenue procedure, notice, or 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 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)(1) 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)(1)(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)(1)(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 the election under section 853. Accordingly, Fund has 90 calendar days from the date of this letter to make the intended election.

This ruling is limited to the timeliness of the filing of the election in section 853(a) of the Code. This ruling's application is limited to the facts, representations, Code sections, and regulations cited herein. No opinion is expressed with regard to whether Fund otherwise qualifies as a RIC under subchapter M of the Code.

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 transactions described above.

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

In accordance with the terms of a power of attorney on file in this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Andrea M. Hoffenson

Andrea M. Hoffenson
Branch Chief, Branch 2
Office of Associate Chief Counsel
(Financial Institutions and Products)