

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201720004**
Release Date: 5/19/2017

Third Party Communication: None
Date of Communication: Not Applicable

Index Number: 1272.05-00, 9100.00-00

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:FIP:3
PLR-126993-16
Date:
February 16, 2017

LEGEND

Fund =
Company =
Date 1 =
Date 2 =
Date 3 =
Date 4 =
Date 5 =
Date 6 =
State A =
Partnership =
Accountant 1 =
Partner =
Manager =
Accounting Firm =
Treasurer =

Dear

This letter is in reply to a letter dated August 29, 2016, and subsequent correspondence, requesting on behalf of Fund an extension of time under § 301.9100-1 of the Procedure and Administration Regulations to make an election under § 1.1272-3(a) of the Income Tax Regulations to include in gross income all interest that accrued on eligible debt instruments that Fund acquired during the taxable year ended Date 4 by using the constant yield method described in § 1.1272-3(c).

FACTS

Fund is a series fund of Company, a State A open-ended management investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., as amended.

Fund commenced operations on Date 3. Since its inception, Fund has qualified as a separate regulated investment fund subject to the rules of §§ 851 through 855.

Fund invests primarily in non-investment grade corporate bonds and secured and unsecured loans of U.S. issuers and non-U.S. issuers (collectively hereinafter referred to as "Loans").

Partnership, a global investment management firm, is the investment manager of Fund. Accountant 1 was responsible for tax accounting matters for Partnership.

Partnership engaged Accounting Firm, on Fund's behalf, to audit Fund's financial statements and to prepare Fund's Forms 1120-RIC for the taxable years ending on Date 4 ("Year 1 Return") and Date 5 ("Year 2 Return").

On Date 1, Accountant 1, on Fund's behalf, consulted with Partner, a tax partner of Accounting Firm, regarding accounting methods and tax elections to be made by Fund with respect to its first taxable year, ending on Date 4. Based on these consultations, Fund decided to make an election under § 1.1272-3(a) for all eligible debt instruments that it acquired during the taxable year ending on Date 4. Accountant 1 informed Partner at Accounting Firm of that decision on Date 2.

Fund's audited financial statements and Year 1 Return were prepared on a basis consistent with an election under § 1.1272-3(a) having been made for all eligible debt instruments acquired by Fund during the taxable year ended on Date 4 except for attaching the election statement to Year 1 Return, as required under § 1.1272-3(d). Due to an administrative oversight, Accounting Firm failed to attach the election statement to timely filed Year 1 Return.

On Date 6, while preparing Year 2 Return, Manager, a tax manager of Accounting Firm, reviewed Year 1 Return and discovered that the election statement was not included. On the day of the discovery, Accounting Firm notified Accountant 1 and Treasurer, the assistant treasurer of Company with overall responsibility for filing Year 1 Return, of the omission.

Fund submitted the affidavits of Accountant 1, Partner, Manager, and Treasurer in support of this requested ruling. Fund makes the following representations 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 Fund would have had if the election had been timely made (taking into account the time value of money);
3. Fund is not seeking to alter a return position for which an accuracy-related penalty has been or could have been imposed under § 6662 of the Code at the time Fund requested relief and the new position requires or permits a regulatory election for which relief is requested;
4. Fund intended to make the election under § 1.1272-3(a) for all eligible debt instrument acquired by Fund during its taxable year ending Date 4;
5. The failure to attach the statement required under § 1.1272-3(d) to Year 1 Return to make the election was a result of an administrative oversight by Accounting Firm;
6. Year 1 Return was prepared on a basis consistent with the election having been made for all eligible debt instruments acquired by Fund during the taxable year ending on Date 4 except for the attachment of the election statement to the return;
7. Being fully informed of the required regulatory election and related tax consequences, Fund did not choose to not attach the election statement;
8. The granting of permission to make a late election under § 1.1272-3(a) would not permit a change from an impermissible method of accounting; and
9. Fund is not using hindsight in requesting this relief.

LAW AND ANALYSIS

Under § 1.1272-3(a), a holder of a debt instrument may elect to include in gross income all interest that accrues on the instrument by using the constant yield method. Under § 1.1272-3(d), a holder makes the election by attaching to the holder's timely filed Federal income tax return a statement that the holder is making an election under this section and that identifies the debt instruments subject to the election.

Section 301.9100-1(c) of the regulations provides that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election (defined

in § 301.9100-1(b) as an election whose deadline is prescribed by regulations or by a revenue ruling, a revenue procedure, a notice, or an announcement published in the Internal Revenue Bulletin), 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 301.9100-3(a) through (c)(1)(ii) of the regulations 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 § 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 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 years to which the regulatory election applies 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)(2) provides special rules for accounting method regulatory elections.

CONCLUSION

Based solely 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 § 1.1272-3(a). Accordingly, Fund is granted 90 days from the date of this letter to file an amended federal income tax return for the taxable year ending on Date 4 with its election statement and a copy of this letter attached. The election statement must comply with the requirements of § 1.1272-3(d), except the statement must be attached to the amended return.

This ruling is limited to the timeliness of the filing of Fund's election statement under § 1.1272-3(d). This ruling's application is limited to the facts, representations, Code sections, and regulations cited herein.

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

Sincerely,

Charles W. Culmer
Senior Technician Reviewer, Branch 3
Office of the Associate Chief Counsel
(Financial Institutions & Products)

Enclosure:

Copy of this letter for section 6110 purposes