

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:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B04

PLR-115619-18

Date:

June 27, 2018

In Re:

Legend

Taxpayer =

Fund 1 =

Fund 2 =

Fund 3 =

Transferee Fund =

Date 1 =

Date 2 =

Year 1 =

Company Official =

Tax Professional =

Dear _____ :

This letter responds to a letter dated May 7, 2018, submitted by your authorized representative, requesting an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make an election. The extension is being requested to allow Taxpayer and Transferee Fund to make an election under § 362(e)(2)(C) and § 1.362-4(d) regarding Taxpayer's property contribution to Transferee Fund on Date 2. Specifically, Taxpayer and Transferee Fund are requesting an extension of time to enter into a written, binding agreement to elect to apply § 362(e)(2)(C) (the "Binding Agreement"), and for Taxpayer to file an election statement as described in § 1.362-4(d)(3)(i) (the "Section 362(e)(2)(C) Statement"). The material information submitted in the March 7, 2017, letter and subsequent correspondences is set forth below.

Taxpayer is a regulated investment company ("RIC") within the meaning of § 851(a). In transactions intended to qualify under § 351(a), Taxpayer contributed assets to newly created RICs. In Date 1, Taxpayer contributed assets to Fund 1, and in Date 2, Taxpayer contributed assets to Fund 2, Fund 3, and Transferee Fund. At the time of the property contribution to Transferee Fund, the aggregate basis of the property contributed exceeded its fair market value.

Section 362(e)(2)(A) generally provides that if property is transferred to a corporation as a capital contribution or in an exchange to which § 351 applies and the transferee's aggregate adjusted bases of the transferred property would, if not for the provision, exceed its fair market value immediately after the transfer, then (notwithstanding § 362(a)), the transferee's aggregate adjusted bases in such property will not exceed the fair market value of such property immediately after such transaction.

However, under § 362(e)(2)(C), the transferor and the transferee may make a joint election to reduce the transferor's basis in the stock received in the exchange to its fair market value, and no reduction of the transferee's basis in the property received will be required. Section 362(e)(2)(C) further provides that the joint election shall be made at such time and in such form and manner as the Secretary may prescribe and, once made, shall be irrevocable.

Section 1.362-4(d)(1) of the Income Tax Regulations provides that a section 362(e)(2)(C) election has two steps. The first step is the transferor and transferee entering into a written, binding agreement to elect to apply § 362(e)(2)(C). The second step is filing a Section 362(e)(2)(C) Statement in accordance with § 1.362-4(d)(3).

Section 1.362-4(d)(3)(ii)(A) provides that if the transferor is required to file a United States federal income tax return, the Section 362(e)(2)(C) Statement is filed by

the transferor with its timely filed original United States tax return for the taxable year in which the transfer occurred.

In order to make a section 362(e)(2)(C) election, the Taxpayer and Transferee Fund were required to enter into the Binding Agreement prior to filing the Section 362(e)(2)(C) Statement on or with the Taxpayer's timely filed income tax return for Year 1. Taxpayer and Transferee Fund intended to make the section 362(e)(2)(C) election. For various reasons, however, Taxpayer and Transferee Fund failed to enter into the Binding Agreement, and Taxpayer failed to file the Section 362(e)(2)(C) Statement.

Subsequently, this request was submitted, under §§ 301.9100-1 and 301.9100-3, for an extension of time to enter into the Binding Agreement and to file the Section 362(e)(2)(C) Statement in order to make the section 362(e)(2)(C) election. Taxpayer and Transferee Fund represent that neither party is seeking to alter a return position for which an accuracy-related penalty has been or could be imposed under § 6662 at the time of the request for relief (taking into account any qualified amended return filed within the meaning of § 1.664-2(c)(3)).

Under § 301.9100-1(c), 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 taxpayers who are abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-1(b) defines the term "regulatory election" as an election whose due date is prescribed by a regulation, revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter). Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. See § 301.9100-1(a). Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making regulatory elections that do not meet the requirements of § 301.9100-2. Requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government. Section 301.9100-3(a).

The time for making the section 362(e)(2)(C) election is fixed by § 1.362-4(d). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Taxpayer and Transferee Fund to enter into the Binding Agreement, and for Taxpayer to file the Section 362(e)(2)(C) Statement, provided Taxpayer and Transferee Fund acted reasonably and in good faith, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the government.

Information, affidavits, and representations submitted by Taxpayer, Transferee Fund, Company Official, and Tax Professional explain the circumstances that resulted in the failure to make the section 362(e)(2)(C) election. The information establishes that Taxpayer and Transferee Fund reasonably relied on a qualified tax professional who failed to advise Taxpayer and Transferee Fund to properly make the section 362(e)(2)(C) election, and that the request for relief was filed before the failure to properly make the section 362(e)(2)(C) election was discovered by the Internal Revenue Service. See §§ 301.9100-3(b)(1)(i) and (v).

Based on the facts and information submitted, including the affidavits submitted and the representations made, we conclude that Taxpayer and Transferee Fund acted reasonably and in good faith, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government. Accordingly, an extension of time is granted under § 301.9100-3, until 60 days from the date on this letter, for Taxpayer and Transferee Fund to enter into the Binding Agreement, and for Taxpayer to file the Section 362(e)(2)(C) Statement, in the manner described by § 1.362-4(d)(3).

This extension of time is conditioned on the Federal tax liability (if any) of any relevant party not being lower, in the aggregate, for all years to which the section 362(e)(2)(C) election applies than it would have been if the section 362(e)(2)(C) election had been timely made (taking into account the time value of money). No opinion is expressed as to the tax liability for the years involved. A determination thereof will be made by the Director's office upon audit of the federal income tax returns involved.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction discussed in this letter. Specifically, no opinion is expressed concerning the basis or fair market value of any asset, whether any of the property contributions qualify under § 351(a), and whether the Taxpayer and Transferee Fund are substantively entitled to make a Section 362(e)(2)(C) election. In addition, we express no opinion as to the tax effects or consequences of making the section 362(e)(2)(C) election late under the provisions of any other section of the Code or regulations, or as to the tax treatment of any conditions existing at the time of, or effects resulting from, making the section 362(e)(2)(C) election late that are not specifically set forth in the above ruling.

For purposes of granting relief under § 301.9100-3, we have relied on certain statements and representations that Taxpayer, Transferee Fund, Company Official, and Tax Professional made under penalties of perjury. However, the Director should verify all essential facts. Moreover, notwithstanding that an extension is being granted under § 301.9100-3 to make the section 362(e)(2)(C) election, any penalties and interest that would otherwise be applicable, if any, continue to apply.

This letter 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.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to the return that provides the date and control number (PLR-115619-18) on this letter ruling.

In accordance with the Power of Attorney on file with this office, copies of this letter are being sent to your authorized representatives.

Sincerely,

Ken Cohen
Senior Technician Reviewer, Branch 3
Office of Associate Chief Counsel (Corporate)

cc: