

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

In Re:

Refer Reply To:
CC:ITA:B02
PLR-106588-19
Date:
August 05, 2019

TY: Taxable year ending

Legend

Taxpayer =

A =

Date1 =

Dear

This is in response to a letter dated March 25, 2019, in which Taxpayer is requesting consent to revoke its election under section 163(d)(4)(B) of the Internal Revenue Code to treat a certain amount of qualified dividend income as investment income for TY. In addition, Taxpayer is requesting an extension of time to make a late election to treat a lesser amount of qualified dividends as investment income under section 163(d)(4)(B) for TY. This request is made in accordance with §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations.

FACTS AND REPRESENTATIONS

Taxpayer represents the following:

Taxpayer is a trust that files Form 1041 (U.S. Income Tax Return for Estates and Trusts). Taxpayer uses the calendar year as its taxable year.

Taxpayer filed Form 1041 for TY. On Form 4952, attached to Form 1041, Taxpayer elected to treat a certain amount of qualified dividend income as investment

income for purposes of the investment interest expense deduction. Taxpayer made the decision to elect to include that certain amount of qualified dividend income as investment income based upon information received on a Schedule K-1 from A.

On Date1, A issued an amended Schedule K-1 to Taxpayer for TY showing a decrease in the amount of ordinary and qualified dividends. The revisions in the Schedule K-1 have a substantial impact on Taxpayer's tax calculations. Therefore, Taxpayer is requesting consent to revoke its election under section 163(d)(4)(B) to treat a certain amount of qualified dividend income as investment income for TY. In addition, Taxpayer is requesting an extension of time to make a late election to treat a lesser amount of qualified dividends as investment income under section 163(d)(4)(B) for TY.

LAW AND ANALYSIS

Section 163(d)(1) of the Internal Revenue Code provides that in the case of a taxpayer other than a corporation, the amount allowed as a deduction for investment interest for any taxable year shall not exceed the net investment income of the taxpayer for the taxable year. Section 163(d)(4)(A) provides that net investment income means the excess of investment income over investment expenses.

Section 163(d)(4)(B) defines investment income. Section 163(d)(4)(B) states that investment income shall include qualified dividend income only to the extent the taxpayer elects to treat such income as investment income for purposes of this subsection. Section 1.163(d)-1(a) provides that, as a consequence, the qualified dividend income taken into account as investment income is not eligible to be taxed at the favorable capital gain rate.

Section 1.163(d)-1(b) provides that the election to treat qualified dividend income as investment income must be made on or before the due date (including extensions) of the income tax return for the taxable year in which the income is recognized.

Section 1.163(d)-1(c) provides that the election to treat qualified dividend income as investment income is revocable with the consent of the Commissioner.

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 an election. Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make certain regulatory elections. Section 301.9100-1(b) defines a "regulatory election" as an election whose due date is prescribed by a regulation published in the

Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

Section 301.9100-3(a) provides that requests for extensions of time for regulatory elections 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(b)(1) provides that, in general, a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer: (i) requests relief 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, 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, and the tax professional failed to make, or advise the taxpayer to make, the election.

Section 301.9100-3(b)(3) provides that a taxpayer is deemed to have not acted reasonably and 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 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. 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.

Section 301.9100-3(c)(2) provides special rules for accounting method regulatory elections. Section 301.9100-3(c)(2) provides that the interests of the Government are deemed prejudiced, except in unusual or compelling circumstances, if the accounting method regulatory election for which relief is requested is subject to the advance consent procedures for method changes, requires a § 481(a) adjustment, would permit a change from an impermissible method of accounting that is an issue under consideration by examination or any other setting, or provides a more favorable method of accounting if the election is made by a certain date or taxable year.

Taxpayer's election is a regulatory election as defined in § 301.9100-1(b) because the due date of the election is prescribed in § 1.163(d)-1(b) of the Income Tax Regulations. The Commissioner has the authority under §§ 301.9100-1 and 301.9100-3 to permit Taxpayer to revoke a regulatory election and to grant an extension of time to file a late regulatory election.

CONCLUSION

Based upon our analysis of the facts and representations provided, Taxpayer acted reasonably and in good faith, and granting relief will not prejudice the interests of the Government. Therefore, the requirements of §§ 301.9100-1 and 301.9100-3 have been met.

Pursuant to § 1.163(d)-1(c), Taxpayer is granted consent to revoke its election under section 163(d)(4)(B) to treat a certain amount of qualified dividend income as investment income for TY. Taxpayer is granted an extension of 60 days from the date of this letter to make a late election to treat a lesser amount of qualified dividends as investment income for TY.

CAVEATS

The rulings contained in this letter are based on information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement 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.

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.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, a taxpayer filing its return electronically may satisfy this requirement by attaching a statement to its return that provides the date and control number of the letter ruling.

In accordance with the provisions of the power of attorney currently on file with this office, a copy of this letter is being sent to your authorized representative. We are also sending a copy of this letter to the appropriate operating division director. Enclosed is a copy of the letter ruling showing the deletions proposed to be made in the letter when it is disclosed under § 6110.

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

Sincerely yours,

David B. Silber
Acting Senior Technician Reviewer,
Branch 2
Office of Associate Chief Counsel
(Income Tax & Accounting)

Enclosure:

Copy for § 6110 purposes

cc: