

Internal Revenue Service

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
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PLR-101771-20
Date:
January 28, 2020

Legend:

- Taxpayer =
- Manager =
- Contractor =
- Date 1 =
- Date 2 =
- Date 3 =

Dear :

This ruling responds to a letter dated December 27, 2019 submitted on behalf of Taxpayer. Taxpayer requests an extension of time under sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make an election under section 853 of the Internal Revenue Code (the "Code") for the taxable year ended on Date 1.

FACTS

Taxpayer is registered as a non-diversified, closed-end investment company under the Investment Company Act of 1940, as amended, and has elected to be taxed as a regulated investment company ("RIC") under part I of subchapter M of chapter 1 of the Code. Taxpayer uses the calendar year as its taxable year and an accrual method of accounting for U.S. federal income tax purposes.

For its taxable year ended Date 1, Taxpayer represents that it satisfied the requirements of section 853 and qualified to pass through to its shareholders the deduction or credit for the foreign taxes Taxpayer paid.

Taxpayer contracts with Manager to provide or procure administrative and other services, including the preparation and filing of domestic and foreign tax reports and monitoring Taxpayer's compliance with all applicable tax laws and regulations. Manager is permitted to contract with other entities to fulfill its duties to Taxpayer and has contracted with Contractor to prepare and file for Taxpayer domestic and foreign tax reports, including income tax returns, and monitor compliance with subchapter M and all other applicable tax laws and regulations.

Contractor, on behalf of Taxpayer, timely filed on Date 2 Taxpayer's Form 1120-RIC, *U.S. Federal Income Tax Return for Regulated Investment Companies*, for its taxable year ended Date 1. On this Form 1120-RIC, Taxpayer indicated that it met the requirements of section 853(a) and section 901(k) and elected to pass through to its shareholders the deduction or credit for foreign taxes that Taxpayer paid (Schedule K, item 10a). Consistent with that election, Taxpayer's Form 1120-RIC did not reflect a deduction (line 12) or a credit (Schedule J, line 3a) for Taxpayer's foreign taxes, and it did include Taxpayer's foreign taxes as an addition to the dividends paid deduction under section 853(b)(1)(B) (Schedule A, line 6).

The Form 1120-RIC, however, was filed without Form 1118, *Foreign Tax Credit—Corporations*, attached thereto. Taxpayer became aware of the failure to include Form 1118 with its Form 1120-RIC on Date 3. Prior to the time that the return was due, the employee responsible for filing Taxpayer's federal income tax return, on behalf of Contractor, and the supervising employee responsible for reviewing the return, left the department. Because of the departures, the remaining employees responsible for filing the return on behalf of Contractor did not realize that a Form 1118 was not attached to Taxpayer's Form 1120-RIC when it was filed. Because Taxpayer's Form 1118 was not timely filed with Taxpayer's Form 1120-RIC, Taxpayer cannot make a timely election under section 853 absent the requested relief.

In all taxable years prior to the taxable year ended Date 1, Taxpayer has qualified for and elected to pass through the foreign taxes it has paid in a given taxable year to its shareholders and properly included Form 1118 supporting such an election with its timely filed Form 1120-RIC.

Taxpayer makes the following additional representations in connection with its 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 Taxpayer having a lower U.S. federal tax liability in the aggregate for all years to which the election applies than Taxpayer would have had if the election had been timely made (taking into account the time value of money).

3. Taxpayer 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 at the time Taxpayer requested relief and the new position requires or permits the regulatory election for which relief is requested.

4. Being fully informed of the required regulatory election and related tax consequences, Taxpayer did not choose to not file the election.

5. Taxpayer 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 advantageous to Taxpayer.

6. The period of limitations on assessment under section 6501(a) has not expired for Taxpayer for the taxable year in which the election should have been filed, nor for any taxable year(s) that would have been affected by the election had the election been timely filed.

In addition, affidavits on behalf of Taxpayer and Manager have been provided as required by sections 301.9100-3(e)(2) and (3).

LAW AND ANALYSIS

Section 853(a) provides that a RIC, more than 50 percent of the value (as defined in section 851(c)(4)) 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 section 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) provides that the effect of the election is to deny an electing RIC any deduction under section 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) 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.

Sections 1.853-4(a) and (b) of the Income Tax Regulations provide that an election under section 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) requires that certain information pertinent to the election, including, among other things, 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.

Section 301.9100-1(c) 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 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. A taxpayer will be 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 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.

CONCLUSIONS

Based on the information submitted and representations made we conclude that Taxpayer has satisfied the requirements for granting a reasonable extension of time to elect under section 853 for the taxable year ended on Date 1. Accordingly, Taxpayer has 90 days from the date of this letter to make its intended election.

This ruling is limited to the timeliness of the filing of the election in section 853 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 Taxpayer otherwise qualifies as a RIC under subchapter M of chapter 1 of the Code.

No opinion is expressed with regard to whether the tax liability of Taxpayer 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.

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, copies of this letter are being sent to your authorized representatives.

Sincerely,

Steven Harrison
Branch Chief, Branch 1
Office of Associate Chief Counsel
(Financial Institutions and Products)

cc: