Internal Revenue Service

Number: **202205015**
Release Date: 2/4/2022

Index Number: 163.00-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

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Refer Reply To:
CC:ITA:B03
PLR-111046-21

Date:
November 09, 2021

In Re:

LEGEND

Taxpayer =
TY =
Tax Preparer =
$A =

Dear :

This is in response to a letter dated , and supplemental correspondence dated , in which Taxpayer requests consent to revoke its election to treat qualified dividend income and net capital gain as investment income under § 163(d)(1) and 163(d)(4)(B) of the Internal Revenue Code for TY.

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.

For a number of years, Taxpayer retained Tax Preparer to prepare its federal income tax return and various state income tax returns. The returns are complex with much of the information coming from approximately 175 Schedule K-1s. The Schedule K-1s are varied and complex and many are received close to Taxpayer's filing deadlines. Taxpayer relies on Tax Preparer to prepare its returns accurately and provide advice with respect to elections.

Tax Preparer prepared and timely filed Taxpayer's Form 1041 for TY. On Form 4952, attached to its Form 1041, Taxpayer elected to treat a certain amount of qualified

dividend income and net capital gain as investment income for purposes of the investment interest expense deduction under § 163(a). Tax preparer advised this election because Taxpayer had received a Schedule K-1 reporting $A as "other income," which Tax Preparer reported as non-passive portfolio income.

After the return was filed, Taxpayer's representatives reviewed the return and questioned the source of the $A. Tax Preparer contacted the preparer of the Schedule K-1 and learned that the amount was cancelation of debt income. This information had a substantial impact on Taxpayer's tax calculations because Taxpayer had sufficient passive activity losses to offset the cancelation of debt income, rendering the election under § 163(d)(4)(B) unnecessary.

LAW AND ANALYSIS

Section 163(d)(1) provides that, in the case of a taxpayer, other than a corporation, the amount allowed as a deduction for investment interest shall not exceed the net investment income of the taxpayer for the taxable year.

Section 163(d)(4)(B) defines the term "investment income," in general, as the sum of:

(i) Gross income from property held for investment (other than gain taken into account under clause (ii)(I)),

(ii) The excess (if any) of (I) The net gain attributable to the disposition of property held for investment, over (II) The net capital gain determined by only taking into account gains and losses from dispositions of property held for investment, plus

(iii) So much of the net capital gain referred to in clause (ii)(II) (or if lesser, the net gain referred to in clause (ii)(I)) as the taxpayer elects to take into account under this clause.

Section 163(d)(4)(B) also provides that the term includes qualified dividend income (as defined in § 1(h)(11)(B)) only to the extent the taxpayer elects to treat such income as investment income for purposes of § 163(d).

Section 1.163(d)-1(b) of the Income Tax Regulations 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 net capital gain is recognized or the qualified dividend income is received.

Section 1.163(d)-1(c) provides that the elections described in § 1.163(d)-1 are revocable with the consent of the Commissioner.

Taxpayer requests consent to revoke its election to treat qualified dividend income and net capital gain as investment income under § 163(d)(1) and 163(d)(4)(B) of

the Internal Revenue Code for TY, which was based on tax advice rendered by a qualified tax professional. This situation is analogous to those situations concerning taxpayers who have not made a particular election provided in the regulations because of inadequate or incorrect advice from knowledgeable tax professionals and are subsequently seeking extensions of time under § 301.9100 the Procedure and Administration Regulations in which to make the election. See Rev. Rul. 83-74, 1983-1 C.B. 112.

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:

(iv) Requests relief before the failure to make the regulatory election is discovered by the Service;

(v) Failed to make the election because of intervening events beyond the taxpayer's control;

(vi) Failed to make the election because, after exercising reasonable diligence, the taxpayer was unaware of the necessity for the election;

(vii) Reasonably relied on the written advice of the Service; or

(viii) 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 § 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. If specific facts have changed since the due date for making the election that make the election advantageous to a taxpayer, the IRS will not ordinarily grant relief. In such a case, the IRS will grant relief only when the taxpayer provides strong proof that the taxpayer's decision to seek relief did not involve hindsight.

Section 301.9100-3(c)(1) provides that the Commissioner will grant a reasonable extension of time to make a regulatory election only when the interests of the Government will not be prejudiced by the granting of relief. The interests of the Government:

(i) Are prejudiced if granting relief would result in a 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).

(ii) 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.

CONCLUSION

Based solely on the facts and information provided, including the affidavits submitted and representations made, we conclude that Taxpayer has shown it acted reasonably and in good faith, and that granting permission to revoke Taxpayer’s election for TY to treat qualified dividend income and net capital gain as investment income under § 163(d)(4)(B) will not prejudice the interests of the government.

Accordingly, pursuant to § 1.163(d)-1(c), the consent of the Commissioner is hereby granted to revoke the election under § 163(d)(4)(B) to treat qualified dividend income and net capital gain as investment income for TY. This revocation must be made in a written statement filed with Taxpayer’s amended federal tax returns for TY. In addition, a copy of this letter must be attached to such amended federal tax returns. Alternatively, for any such amended return filed electronically, a statement must be attached to the amended return that provides the date and control number of the letter ruling.

The ruling contained in this letter is based upon information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. 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 federal income tax consequences of any aspect of any transaction or item discussed or referenced in this letter. This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

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 representatives. We are also sending a copy of this letter to the appropriate operating division director.

Sincerely yours,

Susie K. Bird
Senior Counsel, Branch 3
Office of Associate Chief Counsel
(Income Tax & Accounting)