

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:

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PLR-124327-21

Date: 5/13/2022

LEGEND:

Taxpayer 1 =

Taxpayer 2 =

Management Firm =

Board of Directors =

Accounting Firm 1 =

Accounting Firm 2 =

Date 1 =

Date 2 =

Date 3 =

Date 4	=
Date 5	=
Date 6	=
Date 7	=
Date 8	=
Month 1	=
Month 2	=
Month 3	=
Year 1	=

Dear :

This ruling responds to a letter dated November 24, 2021, and subsequent correspondence submitted on behalf of Taxpayer 1. Taxpayer 1 requests a ruling granting an extension of time as the successor in interest to Taxpayer 2, under sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations (the “Regulations”) to make a determination under section 860(e)(4) of the Internal Revenue Code (the “Code”) for the taxable year that ended Date 1 (Taxpayer 2 merger with Taxpayer 1) (the “Tax Year”).

FACTS

Taxpayer 1 was established on Date 2, as a C corporation. Taxpayer 1 ends its taxable year on Date 3. Taxpayer 1 invests primarily in equity or equity-related securities traded on a principal U.S. exchange or over-the-counter market.

Taxpayer 1 is managed by Management Firm, a global investment firm which operates a variety of investment vehicles, from offshore limited partnerships to mutual funds and model portfolios.

Taxpayer 2 was established on Date 4 and was also managed by Management Firm. Taxpayer 2 employed similar investment strategies to that of Taxpayer 1.

On Date 1, Taxpayer 2 merged into Taxpayer 1 in a reorganization qualifying under section 368(a), at which time Taxpayer 2 ceased to exist, and its taxable year came to a close.

Since their respective formations, Taxpayer 2 (through its date of reorganization) and Taxpayer 1 have operated and qualified as regulated investment companies ("RICs") under subchapter M of the Code and, historically, have timely filed Form 1120-RIC on an annual basis.

On Date 5, the Board of Directors ("Board") engaged Accounting Firm 1 as a tax advisor and services provider for its series of funds (including Taxpayer 1 and Taxpayer 2). Accounting Firm 1 was engaged to prepare all of the necessary tax compliance returns and other documents for all of the Board's funds and to advise the Board throughout the process, beginning with the taxable years ending in Year 1.

Before the Date 1 reorganization (Taxpayer 2 into Taxpayer 1), Accounting Firm 1 prepared a preliminary final taxable income calculation for Taxpayer 2. Immediately after the final distribution and reorganization date, Accounting Firm 1 prepared the final taxable income calculation for Taxpayer 2 and determined that Taxpayer 2 was under-distributed, for purposes of section 852, for its final taxable year. Accounting Firm 1 advised that the under-distribution could be addressed through the use of the deficiency dividend process.

Based on the taxable income calculation and Accounting Firm 1's advice, the Board determined that Taxpayer 1 would pay a deficiency dividend pursuant to sections 381(c)(23) and 860(f) in order to cure the under-distributed amount of Taxpayer 2, with the intent to ensure Taxpayer 1 maintain RIC status pursuant to section 852. Taxpayer 1 relied on Accounting Firm 1 to identify and address any required administrative steps and informed Accounting Firm 1 that Taxpayer 1 would declare and pay the dividend on or about Date 6.

On Date 7, Taxpayer 1 declared a dividend and subsequently on Date 6, Taxpayer 1 paid such dividend to all shareholders of Taxpayer 1 as of the recorded date of the dividend. This payment was intended to qualify as a deficiency dividend, as Taxpayer 1 believed that all steps were properly completed by Accounting Firm 1, including the required Form 9927, *Determination Under Section 860(e)(4) by a Qualified Investment Entity*.

In Month 1, Taxpayer 1 asked its auditor, Accounting Firm 2, to perform interim audit procedures and review the annual financial statement relative to the reorganization and deficiency dividend. As part of this review, Accounting Firm 2 requested documentation – including a copy of the Form 9927 filed on behalf of Taxpayer 2. Pursuant to these requests, the officers of Taxpayer 1 requested the documentation from Accounting Firm 1 several times throughout Month 2. In early

Month 3, Taxpayer 1 was advised by Accounting Firm 1 that the Form 8927 had not been filed.

Shortly after the discovery of the failure to timely file the Form 8927, the Board terminated its relationship with Accounting Firm 1 and engaged Accounting Firm 2 as the tax advisor for Taxpayer 1. Accounting Firm 2 suggested the best option to rectify the failure to file the required form was to request relief to make a determination under section 860(e)(4). Accordingly, Taxpayer 1 submitted a request for an extension of time under sections 301.9100-1 and 301.9100-3 to file, as successor in interest to Taxpayer 2, Form 8927, to make a determination under section 860(e)(4) and Revenue Procedure 2009-28 for the Tax Year, and to file any related forms (Form 976, *Claim for Deficiency Dividends Deductions by a Personal Holding Company, Regulated Investment Company, or Real Estate Investment Trust*).

Taxpayer 1 makes the following additional 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 Taxpayer 1 having a lower U.S. federal tax liability in the aggregate for all years to which the election applies than it would have had if the election had been timely made (taking into account the time value of money).
3. Taxpayer 1 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 it requested relief and the new position requires or permits a regulatory election for which relief is requested.
4. Being fully informed of the required regulatory election and related tax consequences, Taxpayer 1 did not choose to not file the election.
5. Taxpayer 1 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 1.
6. The period of limitation on assessment under section 6501(a) has not expired for Taxpayer 1 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 it been timely filed.

In addition, affidavits on behalf of Taxpayer 1, Accounting Firm 1, and Accounting Firm 2 have been provided as required by section 301.9100-3(e).

LAW AND ANALYSIS

Section 860(a) generally provides that if a determination with respect to any qualified investment entity results in any adjustment for any taxable year, a deduction shall be allowed to such entity for the amount of deficiency dividends for purposes of determining the deduction for dividends paid (for purposes of section 852 or section 857, whichever applies) for such year. Section 860(b)(1) provides that the term “qualified investment entity” includes a RIC.

Section 860(e)(4) provides that the term “determination” includes a statement by the taxpayer attached to its amendment or supplement to a return of tax for the relevant tax year.

Section 860(f)(1) provides, in part, that no distribution of property shall be considered as deficiency dividends for purposes of section 860(a) unless distributed within 90 days after the determination, and unless a claim for a deficiency dividend deduction with respect to such distribution is filed pursuant to section 860(g).

Section 860(g) provides that no deficiency dividend deduction shall be allowed under section 860(a) unless (under regulations prescribed by the Secretary) claim therefor is filed within 120 days after the date of the determination. Section 1.860-2(b)(2) of the Income Tax Regulations provides that the claim required by section 860(g) shall be made on Form 976, *Claim for Deficiency Dividends Deductions by a Personal Holding Company, Regulated Investment Company, or Real Estate Investment Trust*.

Revenue Procedure 2009-28, 2009-20 I.R.B. 1011, provides procedures for a RIC to follow to make a self-determination under section 860(e)(4) for purposes of the deficiency dividends procedures of section 860. Section 4.01(1) of Rev. Proc. 2009-28 provides that if a RIC properly completes Form 8927, *Determination Under Section 860(e)(4) by a Qualified Investment Entity* and files Form 8927 with the Service, in accordance with the applicable instructions, then that form will be treated for purposes of section 860(e)(4) as a statement by the taxpayer attached to its amendment or supplement to a return of tax for the relevant tax year.

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, 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 for an automatic extension under section 301.9100-2. Section 301.9100-3(a) provides that requests for relief subject to section 301.9100-3 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 generally is deemed to have acted reasonably and in good faith if the taxpayer (i) requests relief under section 301.9100-3 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, however, 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 section 301.9100-3.

CONCLUSION

Based on the information submitted and representations made, we conclude that Taxpayer 1, as successor in interest to Taxpayer 2, has satisfied the requirements for granting a reasonable extension of time to file Form 8927 to make a determination under section 860(e)(4) dated Date 7 for purposes of section 860(f)(1) and (g), and to

file Form 976 to claim a deficiency dividend deduction under section 860(g) for the dividends subsequently distributed on Date 6 that relate to that determination. The Form 976 will be deemed filed on the last available filing day after the Date 7 date of determination, i.e. Date 8. Consistent with this ruling, Taxpayer 1 is granted a period of 90 calendar days from the date of this letter to file Forms 8927 and 976 with the Service.

This ruling is limited to the timeliness of the filing of Forms 8927 and 976. This ruling's application is limited to the facts, representations, and Code and Regulations sections cited herein.

Except as 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. In particular, no opinion is expressed as to whether Taxpayer 1 otherwise qualify as a RIC under section 852.

No opinion is expressed with regard to whether the tax liability of Taxpayer 1 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.

The ruling contained in this letter is based upon information submitted and representations made by Taxpayer 1 and accompanied by penalties of perjury statements executed by the 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.

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.

In accordance with the terms of a power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Matthew P. Howard
Senior Counsel, Branch 2
Office of the Associate Chief Counsel
(Financial Institutions & Products)

PLR-124327-21

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Enclosure:

cc: