

Dear _____ :

This is in reply to a letter dated March 13, 2007, and a subsequent submission, requesting on behalf of Fund an extension of time pursuant to section 301.9100-1 of the Procedure and Administration Regulations to make elections under section 855 of the Internal Revenue Code and section 1.1272-3(a) of the Income Tax Regulations.

FACTS

Fund was organized as a State X business trust on Date 1, and is registered under the Investment Company Act of 1940, as amended. Fund began operations on Date 2, and has always intended to qualify as a regulated investment company ("RIC") subject to the provisions of sections 851-855 of Subchapter M of Chapter I of the Code.

In Month 1, Fund determined that the necessary distributions to eliminate its investment company taxable income ("ICTI") for Year 1 would be \$a. Fund also determined that distributions from ICTI had already been made for Year 1 in the amount of \$b, and that additional distributions were required for the remaining \$c. The calculation of Fund's ICTI was done assuming that the election under section 1.1272-3(a) to treat all interest on debt instruments as original issue discount, and the section 855 election, would be timely made.

Fund declared the necessary dividends and by Date 4 Fund had made the required dividend distributions.

The only remaining step Fund had to complete to be in full compliance with section 855 and with section 1.1272-3 was to make the required elections on the timely filed Form 1120-RIC (U.S. Income Tax Return for Regulated Investment Companies) for Year 1.

Fund filed Form 7004 (Application for Automatic 6-Month Extension of Time to File Certain Business Income Tax, Information, and Other Returns) on Date 3. The due date for the Form 1120-RIC was automatically extended for six months. Fund's Form 1120-RIC, however, was not filed until Date 5, one day after the extended due date.

Fund represents that Fund timely prepared the Form 1120-RIC and sent it to Tax Advisor for review and signature, and thought that the Form was timely filed. However, due to an administrative error by Tax Advisor, Fund's Form 1120-RIC was filed one day after the extended due date.

Due to the late filing, Fund's election under section 855(a) to treat a portion of its ICTI dividends paid after the end of Year 1 as having been distributed during Year 1 was not timely made. Further, Fund's election to treat all interest on debt instruments as original issue discount under section 1.1272-3(a) was also not timely made.

The returns filed by Fund included the elections under section 855(a) and section 1.1272-3(a). Fund has submitted the affidavit of a Tax Advisor Director, in support of this requested ruling.

Fund makes the following representations with respect to the election under section 855(a) and the election under section 1.1272-3(a):

1. The request for relief was filed by Fund before the failure to make the regulatory election was discovered by the Service.
2. Granting the relief will not result in Fund having a lower tax liability in the aggregate for all years to which the regulatory election applies than Fund would have had if the election had been timely made (taking into account the time value of money).
3. Fund does not seek to alter a return position for which an accuracy-related penalty has been or could have been imposed under Code section 6662 at the time Fund 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, Fund did not choose to not file the election.

Fund makes the following additional representations with respect to the election under section 1.1272-3(a):

1. The election would not permit a change from an impermissible method of accounting that is an issue under consideration by examination, an appeals officer, or a federal court, and the change would not provide a more favorable method or more favorable terms and conditions than if the change were made as part of an examination.
2. The election does not provide a more favorable method of accounting or more favorable terms and conditions if the election is made by a certain date or taxable year.

LAW AND ANALYSIS

Under section 855(a), if a RIC declares a dividend before the due date (including extensions) for filing its income tax return for a taxable year, and distributes the dividend in the 12-month period following the end of the tax year (and not later than the date of the first regular dividend payment made after the declaration), the dividend is considered paid during the taxable year, if the RIC so elects on its income tax return for the taxable year.

Under section 1.855-1(b)(1), the election under section 855(a) must be made in the return filed by the RIC for the taxable year.

Under section 1.1272-3(a), a holder of a debt instrument may elect to include in gross income all interest that accrues on the instrument by using the constant yield method. Under section 1.1272-3(d), a holder makes the election by attaching to the holder's timely filed Federal income tax return a statement that the holder is making an election under this section and that identifies the debt instruments subject to the election.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election (defined in section 301.9100-1(b) as an election whose deadline is prescribed by regulations or by a revenue ruling, a revenue procedure, a notice, or an announcement published in the Internal Revenue Bulletin), or a statutory election (but no more than 6 months except in cases of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3(a) through (c)(1)(i) of the regulations sets forth rules that the Internal Revenue Service generally will use to determine whether, under the 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(b) provides that subject to paragraphs (b)(3)(i) through (iii) of section 301.9100-3, when a taxpayer applies for relief under this section before the failure to make the regulatory election is discovered by the Service, the taxpayer will be deemed to have acted reasonably and in good faith; and section 301.9100-3(c) 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 years to which the regulatory election applies than the taxpayer would have had the election been timely made (taking into account the time value of money).

Section 301.9100-3(c)(2) provides special rules for accounting method regulatory elections. The special rules in sections 301.9100-3(c)(2)(i) and (ii), however, do not apply to an election under section 1.1272-3(a). The election does not require advance written consent of the Commissioner, and does not require an adjustment under section 481(a).

CONCLUSION

Based upon the facts and representations submitted, we conclude that Fund has satisfied the requirements for granting a reasonable extension of time to make the elections under section 855(a) and section 1.1272-3(a). Accordingly, Fund is granted an extension of time until Date 5 to make elections under section 855(a) and section 1.1272-3(a).

This ruling is limited to the timeliness of the filing of the Fund's income tax returns for purposes of the elections under section 855(a) and 1.1272-3(a). This ruling does not relieve Fund of any penalties it may owe as a result of the failure to file its federal income tax return on time. This ruling's application is limited to the facts, representations, Code sections, and regulations cited herein. No opinion is expressed with regard to whether Fund otherwise qualifies as a RIC under subchapter M of the Code.

No opinion is expressed with regard to whether Fund's tax liability 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 return 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.

Except as specifically provided otherwise, no opinion is expressed on the federal income tax consequences of the transaction described above.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) 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,

William E. Coppersmith
William E. Coppersmith
Chief, Branch 2
Office of Associate Chief Counsel
(Financial Institutions & Products)