

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201119021**

Release Date: 5/13/2011

Index Number: 9100.00-00, 860D.01-00

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:FIP:2 – PLR-142293-10

Date:

February 04, 2011

In Re:

Legend:

Fund =

State =

Accountant =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Dear :

This is in reply to a letter dated October 12, 2010, requesting on behalf of Fund an extension of time under section 301.9100-1 of the Procedure and Administration Regulations to make an election under section 855(a) of the Internal Revenue Code.

FACTS

Fund is a State corporation. It is registered as an open-end management investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., as amended (“the 1940 Act”).

Fund has elected to be treated as a regulated investment company (“RIC”) under section 851 of the Code.

For its taxable year ended Date 1, Fund declared and distributed all of its taxable income within the time period permitted by section 855 of the Code, as required by section 852(a). Fund intended to make the election under section 855(a) to treat certain dividends paid in the taxable year ending Date 2 as having been distributed in the taxable year ending Date 1.

Fund failed to timely file its election for the taxable year ended Date 1 because Accountant, its tax preparer, inadvertently missed the filing deadline for Form 7004 requesting an extension of time to file its Form 1120-RIC, on which the election under section 855(a) of the Code is made. Accountant prepared the Form 7004, but failed to mail it to Fund, its client, for signature. Without an extension, Fund’s 1120-RIC for its year ended Date 1 was Date 3.

On Date 4 Accountant discovered the failure to timely file Form 7004. Accountant immediately began preparing Form 1120-RIC for the year ended Date 1. Fund filed the form on Date 5, and on it made the election under section 855(a) of the Code.

Fund has submitted the affidavit of its treasurer, who was responsible for the election, in support of the requested ruling.

Fund makes the following representations:

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 section 6662 of the Code 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.

LAW AND ANALYSIS

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 (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 the case 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 if the election had been timely made (taking into account the time value of money).

CONCLUSION

Based upon the facts and representations submitted, we conclude that Fund has satisfied the requirements of section 301.9100-1(c) of the regulations and should be granted a reasonable extension of time to make an election under section 855(a) of the Code.

Accordingly, the election made on Fund's return filed on Date 5 is deemed to be timely filed for its return for the taxable year ended Date 1.

This ruling is limited to the timeliness of the filing of Fund's income tax returns for purposes of the election under section 855 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 Fund otherwise qualifies as a RIC under subchapter M of the Code.

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

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) 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, this original letter is being sent to you and copies of this letter are being sent to your authorized representatives.

Sincerely yours,

Susan Thompson Baker
Susan Thompson Baker
Senior Technician Reviewer, Branch 2
Associate Chief Counsel
(Financial Institutions and Products)