

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

Number: **202021020**  
Release Date: 5/22/2020

[Third Party Communication:  
Date of Communication: Month DD, YYYY]

Index Number: 851.00-00, 851.01-00, 855.00-00, 9100.00-00  
Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:  
CC:FIP:B01  
PLR-126749-19

Date:  
February 25, 2020

Legend:  
Fund =  
  
Trust =  
Company =  
Year =  
Date 1 =  
Date 2 =  
Date 3 =  
Date 4 =  
Date 5 =  
Date 6 =  
Month =  
a =

Dear :

This ruling responds to a letter dated October 31, 2019, submitted on behalf of Fund. Fund requests an extension of time under sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make elections under sections 851(b)(1) and 855(a) of the Internal Revenue Code (the "Code").

**FACTS**

Trust was organized as a State statutory trust on Date 1. Trust is registered under the Investment Company Act of 1940, as amended, as an open-end management investment company.

Fund is a separate series of Trust established on Date 2. From inception, Fund has operated in a manner intended to qualify it as a regulated investment company (RIC) under subchapter M of chapter 1 of the Code.

Fund's federal income tax return, Form 1120-RIC, *U.S. Income Tax Return for Regulated Investment Companies*, for the tax year ended Date 3 was due on Date 4. Fund intended to file Form 7004, *Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns*, by Date 4 in order to extend the time for filing Fund's Form 1120-RIC. Company files Fund's tax returns and tax returns of more than a RICs annually. Due to a clerical error, Company did not timely file Form 7004 for Fund. Fund was a new fund in Year and was inadvertently omitted from Company's list of tax extensions.

Fund's Form 1120-RIC was mailed on Date 5 on the assumption that Fund's Form 7004 was timely filed and Fund's extended due date for filing the Form 1120-RIC was Date 5. It was Fund's intention to make a timely election under section 851(b)(1) to be taxed as a RIC and accordingly compute its taxable income as a RIC on its Form 1120-RIC for its taxable year ended Date 3. Fund also intended to make an election under section 855(a) and accordingly treat dividends timely declared and timely distributed in accordance with section 855(a)(1) and (2), respectively, as having been paid during Fund's taxable year ended Date 3. Fund timely declared the appropriate dividend or dividends before the 15th day of the 9th month following the close of the tax year ended Date 3 and distributed such dividend or dividends within 12 months after the end of the tax year ended Date 3 and not later than the date of the first regular dividend payment of the same type of dividend made after such declaration.

In Month, Company received a Notice of Penalty Charge under section 6038 dated Date 6 for failure to timely file a Form 5471, *Information Return of U.S. Persons With Respect to Certain Foreign Corporations*, for Fund. Upon receipt of the notice, Company realized that Fund's Form 7004 was not filed. As soon as this oversight was brought to the attention of Fund, Fund made the decision to seek 9100 relief.

Fund makes the following additional representations:

1. The request for relief was filed before the failure to make the regulatory elections was discovered by the Internal Revenue Service ("Service").
2. Granting the relief requested will not result in Fund having a lower tax liability in the aggregate for all years to which the elections apply than it would have had if the elections 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 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 elections and related tax consequences, Fund did not choose to not file the elections.
5. Fund is not using hindsight in requesting relief. No specific facts have changed since the due date for making the elections that make the elections more advantageous to Fund.

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

In addition, an affidavit on behalf of Company has been provided as required by sections 301.9100-3(e)(2) and (3).

## LAW AND ANALYSIS

Section 851(b)(1) provides that a corporation shall not be considered a RIC for any taxable year unless it files with its return for the taxable year an election to be a RIC or has made such election for a previous taxable year. Section 1.851-2(a) of the Income Tax Regulations provides that the taxpayer shall make its election to be treated as a RIC by computing taxable income as a RIC on its federal income tax return for the first taxable year for which the election is applicable. No other method of making such election is permitted.

Section 855(a) provides that, if a RIC declares a dividend prior to the time prescribed by law for the filing of its return for a taxable year (including the period for any extension of time granted for filing such return), and distributes the amount of such dividend to shareholders in the 12-month period following the close of such taxable year and not later than the date of the first regular dividend payment made after such declaration, the amount so declared and distributed shall, to the extent the RIC elects in such return in accordance with regulations prescribed by the Secretary, be considered as having been paid during such taxable year, except as provided in section 855(b) and (c).

Section 1.855-1(b)(1) provides that a section 855(a) election must be made in the return filed by the RIC for the taxable year. The election shall be made by the RIC by treating the dividend (or portion thereof) to which such election applies as a dividend paid during the taxable year in computing its investment company taxable income, or if the dividend (or portion thereof) to which such election applies is to be designated by the RIC as a capital gain dividend, in computing the amount of capital gain dividends paid during such taxable year.

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 Internal Revenue 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, revenue procedure, notice, or 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 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 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.

## 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 elections under sections 851(b)(1) and 855(a). Since Fund filed its Form 1120-RIC on Date 5, Fund's election to be treated as a RIC for U.S. federal income tax purposes and election to treat dividends declared and distributed in accordance with section 855, as described in this letter, for Fund's taxable year ended Date 3, will be treated as having been timely made, despite having been made after the due date prescribed for making these elections.

This ruling is limited to the timeliness of the filing of Fund's elections under sections 851(b)(1) and 855(a). This ruling's application is limited to the facts, representations, Code sections, and regulations cited herein. Except as specifically provided otherwise, no opinion is expressed on the federal income tax consequences of any transaction or item discussed or referenced in this letter. Specifically, no opinion is expressed regarding any material item or representation on Fund's Form

1120-RIC. Additionally, no opinion is expressed with regard to whether Fund otherwise qualifies as a RIC under part I of subchapter M of chapter 1 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 elections apply than such tax liability would have been if the elections had been timely made (taking into account the time value of money). Upon audit of the U.S. 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 U.S. federal income tax effect.

This ruling is directed only to the taxpayers 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 Power of Attorney on file with this office, a copy of this letter is being sent to the Fund's authorized representative.

Sincerely,

---

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

cc: