

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:FIP:B01
PLR-126977-20

Date:
March 19, 2021

Fund =
Trust =
Accounting Firm =
State A =
Tax Officer =
Date 1 =
Date 2 =
Date 3 =
Date 4 =
Date 5 =
Date 6 =
Date 7 =

Dear :

This is in reply to a letter dated November 20, 2020, submitted on behalf of Fund, requesting an extension of time under sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make an election under each of sections 851(b), 855(a), and 1276(b)(2) of the Internal Revenue Code (the "Code").

FACTS

On Date 3, Fund was formed and commenced operations as a separate series of Trust, a State A statutory trust established on Date 2. Fund is registered under the Investment Company Act of 1940, as amended, as an open-end management investment company. Fund intends to be a regulated investment company ("RIC") under subchapter M of chapter 1 of the Code beginning with its taxable year ended

Date 4 (“Taxable Year”). Fund uses an overall accrual method of accounting and has a tax year ending Date 1.

Accounting Firm prepared Fund’s Form 1120-RIC, *U.S. Income Tax Return for Regulated Investment Companies*, for Taxable Year (the “Tax Return”). The Tax Return included: (1) an election under section 851 to treat Fund as a RIC beginning with Taxable Year, (2) an election under section 855(a) to treat certain distributions paid after Taxable Year as paid during Taxable Year, and (3) an election under section 1276(b)(2) to accrue market discount on the basis of a constant interest rate with respect to specified bonds for which Fund was not required to determine market discount prior to Taxable Year.

The Tax Return was due (without extensions) on Date 5. Fund timely filed Form 7004, *Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns*, to extend the due date of Fund’s return to Date 6. The Secretary of the Treasury, in response to the declared Coronavirus Disease (Covid-19) emergency, automatically postponed the Tax Return’s due date to July 15, 2020. See Notice 2020-23, 2020-18 I.R.B. 742. The Tax Return was prepared and signed prior to July 15, 2020, and Taxpayer intended to file the return on or before that date.

Fund represents (and Tax Officer avers) that Fund forgot to mail the Tax Return as a result of substantial disruptions caused by the Covid-19 emergency. Fund only discovered that the Tax Return was not yet mailed when Accounting Firm delivered to Fund’s tax personnel additional Forms 1120-RIC to be mailed on behalf of Fund’s affiliates (which have later tax years). By Date 7, two days after first discovering that the Tax Return was not yet filed, Fund mailed the Tax Return to the Internal Revenue Service (the “Service”) and engaged Accounting Firm to prepare and submit the request for relief to which this letter responds.

Fund makes the following additional representations:

1. The request for relief was filed before the failure to make the elections was discovered by the 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 the elections for which relief is requested.
4. Being fully informed of the required elections and related tax consequences, Fund did not choose to not file the elections.

5. Fund is not using hindsight in requesting relief. No 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 that would have been affected by the elections had they been timely filed.

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

LAW AND ANALYSIS

Section 851(b) 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, in relevant part, that if a RIC declares a dividend by the extended due date for filing the company's tax return for a taxable year 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 dividend payment of the same type of dividend made after such declaration, then 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 otherwise 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 1276(a)(1) provides that, except as otherwise provided in section 1276, gain on the disposition of any market discount bond is treated as ordinary income to the extent of accrued market discount on the bond. Section 1278(a)(1) defines a market discount bond as any bond having market discount, with certain exceptions. Market discount is generally defined by section 1278(a)(2) as the excess of the stated

redemption price of a bond at maturity over the basis of the bond immediately after its acquisition. Section 1276(b)(1) states that, except as otherwise provided in section 1276(b) or (c), accrued market discount is calculated on the basis of ratable accrual. Section 1276(b)(2) allows an election by a taxpayer to calculate accrued market discount on the basis of a constant interest rate. This election, which is irrevocable and made on a bond-by-bond basis, must be made by no later than the due date (including extensions) for the income tax return for the earliest taxable year for which the taxpayer is required to determine accrued market discount. See Rev. Proc. 92-67, sec. 2.12, 1992-2 C.B. 429, 430.

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 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 generally 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 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 this section.

Section 301.9100-3(c)(2) provides special rules for accounting method regulatory elections. Under these rules, the interests of the Government are deemed to be prejudiced except in unusual and compelling circumstances if the accounting method regulatory election for which relief is requested (i) is subject to the procedure described in § 1.446-1(e)(3)(i) (requiring the advance written consent of the Commissioner); (ii) requires an adjustment under section 481(a) (or would require an adjustment under section 481(a) if the taxpayer changed to the method of accounting for which relief is requested in a taxable year subsequent to the taxable year the election should have been made); (iii) would permit a change from an impermissible method of accounting that is an issue under consideration by examination, an appeals office, or a federal court and the change would provide a more favorable method or more favorable terms and conditions than if the change were made as part of an examination; or (iv) provides a more favorable method of accounting or more favorable terms and conditions if the election is made by a certain date or taxable year.

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 an election under each of sections 851(b), 855(a), and 1276(b)(2). Thus, these elections will be treated as having been timely made even though the Tax Return was not mailed to the Service (or otherwise filed) until Date 7.

This ruling is limited to the timeliness of the filing of the elections described herein. 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 the Tax Return. Additionally, no opinion is expressed with regard to whether the 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 return(s) involved, the director's office will determine such tax liability for the year(s) involved. If the director's office determines that such tax liability is lower, that office will determine the U.S. federal income tax effect.

The ruling contained in this letter is based upon information and representations submitted by the Fund 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 ruling, it is subject to verification on examination.

This ruling is directed only to the taxpayer(s) 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 representatives.

Sincerely,

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

cc: