

Internal Revenue Service

Number: **202202004**

Release Date: 1/14/2022

Index Number: 853.00-00, 853.01-00,
9100.00-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:FIP:B01
PLR-109662-21

Date:
October 21, 2021

Legend:

Taxpayer =

Manager =
State

Date 1 =

Date 2

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Dear :

This ruling responds to a letter dated April 15, 2021 submitted on behalf of Taxpayer. Taxpayer 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 and 853 of the Internal Revenue Code (the "Code") for the taxable year ended on Date 1.

FACTS

Taxpayer is a State statutory trust registered as an open-end management investment company under the Investment Company Act of 1940, as amended. Taxpayer uses an overall accrual method of accounting and has a tax year

ending Date 2. Taxpayer intended to elect to be a regulated investment company ("RIC") under section 851(b) of the Code effective for its initial taxable year ended Date 1.

For its taxable year ended Date 1, Taxpayer represents that it satisfied the requirements of section 853 to pass through to its shareholders the deduction or credit for foreign taxes that Taxpayer paid, and that Taxpayer intended to make an election under section 853. Taxpayer provided notice to its shareholders of the section 853 treatment in its annual report for its fiscal year ended Date 1, which was provided to shareholders within 60 days of Date 1.

Taxpayer contracts with Manager to provide accounting, administration, and tax services. Manager is responsible for overseeing Taxpayer's tax function, which includes filing tax returns and requests for extension requests on behalf of Taxpayer. Taxpayer's books and records are maintained at Manager's offices. For Taxpayer's taxable year ended Date 1, Manager was engaged to prepare Taxpayer's (1) Form 1120-RIC, *U.S. Federal Income Tax Return for Regulated Investment Companies*, and (2) Form 7004, *Application for Automatic 6-month Extension of Time to File Certain Business Income Tax, Information, And Other Returns*.

The original due date for Taxpayer's return was Date 3. Manager generally prepares the Form 7004 and mails it via certified mail prior to the original due date for filing the return. Manager drafted the Form 7004 to extend the due date to Date 4 and thought that the Form 7004 was timely filed. Because of workplace restrictions relating to the COVID-19 emergency, which limited personnel in its office, Manager inadvertently failed to timely file the Form 7004 on or before Date 3. Manager discovered on Date 5 that the Form 7004 had not been timely filed during an internal comparison of the filing checklist and the filing record. Because Form 7004 was not timely filed, the deadline for filing Taxpayer's federal income tax return, on which Taxpayer's section 851(b) and section 853 elections were to be made, was not extended from Date 3 to Date 4.

Taxpayer represents that Manager advised Taxpayer to request a letter ruling for relief under sections 301.9100-1 and 301.9100-3 prior to filing Taxpayer's initial tax return, and to include a statement on its return noting the taxpayer had filed a private letter ruling request. On Date 6, Administrator filed Taxpayer's Form 1120-RIC for its taxable year ended Date 1.

Taxpayer makes the following additional representations in connection with its request for an extension of time:

1. The request for relief was filed before the failure to make the regulatory elections was discovered by the Service.

2. Granting the relief requested will not result in Taxpayer having a lower U.S. federal tax liability in the aggregate for all years to which the elections apply than Taxpayer would have had if the elections had been timely made (taking into account the time value of money).

3. Taxpayer does not seek to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662 of the Code at the time Taxpayer requested relief and the new position requires or permits the regulatory elections for which relief is requested.

4. Being fully informed of the required regulatory elections and related tax consequences, Taxpayer did not choose to not file the elections.

5. Taxpayer 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 elections that make the elections advantageous to Taxpayer.

6. The period of limitations on assessment under section 6501(a) has not expired for Taxpayer 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 the elections been timely filed.

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

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 year. Pursuant to section 1.851-2 of the Income Tax Regulations, the election shall be made by computing taxable income as a RIC on the corporation's return for the first taxable year for which the election is applicable.

Section 853(a) provides that a RIC, more than 50 percent of the value (as defined in section 851(c)(4)) of whose total assets at the close of the taxable year consist of stock or securities in foreign corporations, and which meets the requirements of section 852(a) for the taxable year, may elect the application of section 853 for the taxable year with respect to certain taxes paid by the RIC during the taxable year to foreign countries and possessions of the United States.

Section 853(b)(1) provides that the electing RIC (A) is not allowed for the taxable year any deduction under section 164(a) or any credit under section 901 for these taxes, and (B) is allowed an addition to its dividends paid deduction for the taxable year for the amount of these taxes.

Section 853(b)(2) provides that each shareholder of the electing RIC shall (A) include in gross income and treat as paid by the shareholder its proportionate share of these taxes, and (B) treat as gross income from sources within the respective foreign countries and possessions of the United States the sum of the shareholder's proportionate share of these taxes and the portion of any dividend paid by the RIC that represents income derived from sources within foreign countries or possessions of the United States.

Section 853(c) provides that the amount to be treated by a shareholder of the electing RIC as the shareholder's proportionate share of taxes paid to any foreign country or possession of the United States, and gross income derived from sources within any foreign country or possession of the United States, shall not exceed the amounts so reported by the RIC in a written statement furnished to the shareholder.

Section 1.853-4(b) of the Income Tax Regulations provides that an election under section 853 must be made not later than the time prescribed for filing the return (including extensions). The election, once made, is irrevocable with respect to the dividend (or portion thereof), and the foreign taxes paid with respect thereto, to which the election applies.

Section 1.853-4(c) requires that certain information pertinent to the election, including, among other things, the date, form, and contents of its notice to its shareholders, shall accompany the RIC's timely filed federal income tax return for the taxable year on or with a modified Form 1118.

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, 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.

CONCLUSIONS

Based on the information submitted and representations made we conclude that Taxpayer has satisfied the requirements for granting a reasonable extension of time to make elections under sections 851(b) and 853 for the taxable year ended on Date 1. Accordingly, Taxpayer's Form 1120-RIC filed on Date 6 will be treated as a timely filed return for purposes of the elections under sections 851(b) and 853.

This ruling is limited to the timeliness of the filing of the elections under sections 851(b) and 853 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 Taxpayer otherwise qualifies as a RIC or satisfies the requirements of section 853(a). No opinion is expressed on the timeliness of Taxpayer's tax return for any purpose other than the elections under sections 851(b) and 853.

These rulings are directed only to the taxpayer that requested them. 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,

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

cc: