

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

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Refer Reply To:

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Date:

June 5, 2000

LEGEND

- Trust =
- Fund A =
- Fund B =
- Fund C =
- Fund D =
- Fund E =
- Fund F =
- Administrator =
- Accountant =
- State =
- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
- Date 5 =
- Date 6 =

Dear

This is in reply to a letter dated March 7, 2000, requesting a ruling on behalf of Funds A, B, C, D, E, and F ("Fund" or "Funds"). You have requested a ruling that Funds be granted an extension of time under section 301.9100 of the Procedure and Administration Regulations to make an election under section 855 of the Internal Revenue Code for Funds' tax year ending Date 1.

FACTS

Trust is incorporated as a State Business Trust. Each Fund is a portfolio of Trust and is a regulated investment company ("RIC") operating under the Investment Company Act of 1940, as amended, 15 U.S.C. § 80a-1 et seq. Each Fund elected to be taxed as a RIC under subchapter M, part I of Chapter 1 of the Internal Revenue Code. Each Fund has maintained its election and qualification as a RIC in each tax year thereafter. Each Fund files its federal income tax return on the accrual basis using a Date 2 year-end.

Trust retains Administrator as its fund administrator to see that Funds' annual tax returns are prepared and timely filed. Administrator contracts with Accountant for preparation of Funds' tax returns. Accountant delivered Funds' completed tax returns for year ending Date 1 to Administrator on Date 3. Consistent with prior years, Administrator held the returns pending actual declaration and payment of the additional dividends by Funds in compliance with section 855. Funds' returns were due Date 4.

Administrator is responsible for a number of fund groups in addition to Trust's. The Administrator employee responsible for filing the Funds' tax returns on behalf of Trust inadvertently placed the Funds' returns with another group of returns that had Date 6 due dates. On Date 5, when the employee prepared to file the returns due on Date 6, he discovered Funds' returns. When the discovery was made Funds' returns were put in the mail that day.

LAW AND ANALYSIS

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

Section 1.855-1(b)(1) of the Income Tax Regulations provides that a section 855 election must be made in the return filed by the company for the tax year. The election should be made by the taxpayer by treating the dividend (or portion thereof) to which such election applies as a dividend paid during the tax 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 company as a capital gain dividend, in computing the amount of capital gain dividends paid during such tax year. After the time for filing the return for the tax year for which an election is made under section 855(a), the election is irrevocable.

Section 301.9100-1(c) of the regulations provides, in part, 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 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), 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 on the facts and representations submitted, we conclude that each Fund has satisfied the requirements for our granting a reasonable extension of time to allow it to make the election under section 855(a). Accordingly, Funds are granted an extension until Date 5 to make an election under section 855(a) on their federal income tax returns filed for the tax year ending Date 1.

Except as specifically ruled upon herein, we express no opinion concerning any federal excise or income tax consequences relating to the facts herein under any other section of the Code. For example, we express no opinion as to whether Fund, in fact, has satisfied the requirements of section 855 and the regulations thereunder. We also express no opinion as to whether Fund qualifies as a RIC under subchapter M, part I of Chapter 1 of the Code.

No opinion is expressed as to whether the taxpayer's tax liability is not lower in the aggregate for all years to which the regulatory election applies than the taxpayer's 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 district director's office will determine the taxpayer's tax liability for the years involved. If the district director's office determines the taxpayer's liability is lower, that office will determine the federal income tax effect.

This ruling is limited to providing an extension of time for filing a section 855(a) election and does not provide relief from any liability incurred as a result of filing a late return.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely yours,

Assistant Chief Counsel
(Financial Institutions & Products)

Enclosures:

Copy of this letter
Section 6110 Copy