

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:B02

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Date:

January 10, 2005

TY:

LEGEND:

Fund =

State =

Advisor =

Parent =

Accountants =

Year 1 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Dear _____,

This responds to your letter dated August 24, 2004, submitted on behalf of Fund by its authorized representative. Fund requests a ruling granting it an extension of time under sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations (the regulations) to make an election under section 855(a) of the Internal Revenue Code of 1986 (the Code) to treat dividends distributed after the close of the taxable year ending Date 1 as having been made during that taxable year.

FACTS

Fund is organized as a corporation under the laws of State. Fund is a closed-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 timely elected to be treated as a regulated investment company (RIC) pursuant to part 1, subchapter M of the Code. Since its inception, Fund has qualified to be treated as a RIC for all taxable years. Its initial registration statement and each year's annual report have stated explicitly that Fund intended to qualify as a RIC. Fund uses the accrual method of accounting, and uses September 30 as its taxable year-end.

Fund is a wholly-owned subsidiary of Parent. Parent is incorporated under the laws of State, and is also a closed-end management investment company registered under the 1940 Act. Parent has timely elected and has consistently qualified to be taxed as a RIC since its inception.

Fund engaged Advisor to provide it with investment advisory services and other services, including office facilities and personnel necessary to administer Fund. These services include the performance of certain accounting functions in which Advisor directly employs experienced mutual fund accounting professionals.

Fund retained Accountants as its independent auditors and tax return preparers. While Accountants are responsible for preparing and reviewing Fund's tax returns and extension requests, including any applicable Federal income tax elections, Advisor is responsible for reviewing Fund's tax returns and extension requests, and arranging for their timely execution and filing. Pursuant to pre-established tax compliance procedures of Advisor, a checklist is maintained in order to track the status of tax filings and to ensure timely filings of tax returns.

Fund timely filed an extension request on Date 2 on Form 7004 to extend the due date for its return for its taxable year ending Date 1 (the "Year 1 return") until Date 3. Ten days later, Fund declared a dividend that was distributed on Date 4. Consistent

with Fund's initial registration statement, financial statements, and prior distribution practice, Fund intended its Date 4 dividend distribution to qualify for the dividends paid deduction on its Year 1 return in accordance with section 855, thereby allowing it to maintain its RIC status.

By affidavit accompanying this ruling request, Accountants affirm that Fund's Year 1 return was timely prepared and delivered to Advisor on Date 5, a date prior to the due date of the return (as extended). Due to several factors, however, Advisor did not timely file Fund's return. These factors include the reassignment of the responsibility for Fund within Advisor's accounting department; the inadvertent oversight of a newly recruited Advisor associate ("Associate") who assumed responsibility for tax filing, and who was unaware of Advisor's checklist used to track the status of tax filings; and the fact that Fund's Year 1 return was not accounted for correctly on the checklist. Associate was informed of the checklist that was in place to track the status of tax filings only after Fund's Year 1 return had been forwarded to him. On or about date 6, a date approximately one month after the due date for Fund's Year 1 return (as extended), Associate discovered that he had inadvertently omitted to file Fund's Year 1 return. Advisor filed the Year 1 return on Date 7, a week later.

Advisor affirms by affidavit that Fund's Year 1 return was timely prepared and delivered by Accountant to Advisor, and that it should have filed it on behalf of Fund on Date 3. Advisor further asserts that the failure to file Fund's Year 1 return on Date 3 was due merely to inadvertence on its part and was not out of disregard for Fund's filing requirements.

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 than Fund would have had if a timely election had been made (taking into account the time value of money);
3. Fund did 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
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 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 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 otherwise by section 855.

Section 1.855-1(b)(1) of the Income Tax Regulations 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 taxpayer 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 company as a capital gain dividend, in computing the amount of capital gain dividends paid during such taxable year.

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.

Sections 301.9100-3(a) through (c)(1)(i) of the regulations set 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 are satisfied that Fund has acted reasonably and in good faith, and that the granting of relief will not prejudice the interests of the Government. Accordingly, Fund is granted an extension of 30 days from the date of this letter to file make an election under section 855(a) on its federal income tax return for its taxable year ending Date 1.

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

filing a late return. 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 has satisfied all requirements of sections 851 and 855 and the regulations thereunder. We also express no opinion as to whether Fund qualifies as a RIC under subchapter M, part I, of the Code.

This ruling's application is limited to the facts, Code sections, and regulations cited herein. Except as specifically ruled upon above, no opinion is expressed or implied as to any federal excise or income tax consequences regarding Fund.

Further, no opinion is expressed as to whether Fund's tax liability is not lower in the aggregate for the year to which the regulatory election applies than Fund'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 return involved, the director's office will determine Fund's tax liability for the year involved. If the director's office determines Fund's liability is lower, that office will determine the federal income tax effect.

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

Sincerely,

Susan Thompson Baker
Susan Thompson Baker
Assistant to the Branch Chief, Branch 2
(Financial Institutions & Products)