

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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October 05, 2006

LEGEND

Fund 1 =

Fund 2 =

Fund 3 =

State A =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Trust =

Advisor =

Administrator =

Firm =

Dear :

This is in reply to your letter submitted on behalf of Funds 1, 2, and 3 (collectively, the Funds). The Funds request that their elections under § 851(b)(1) of the Internal Revenue Code to be treated as regulated investment companies (RICs) beginning with their initial year ending Date 3 be considered timely filed pursuant to § 301.9100-3 of the Procedure and Administration Regulations. Fund 3 also requests a ruling that it be considered to have timely filed an election under § 855(a) to treat a portion of its ordinary income dividends paid during the taxable year ended Date 7 as having been paid during the taxable year ended Date 3.

FACTS

Trust was organized as a State A statutory trust on Date 1, with the Funds as three diversified common law business trusts registered under the Investment Company Act of 1940, 15 U.S.C. § 80a-1, et seq., as amended. The Funds began operations on Date 2 and intended to qualify as RICs pursuant to Subchapter M of the Code for the taxable year ended Date 3.

Advisor acts as the investment advisor to the Funds and Administrator is the administrator and fund accounting agent to the Funds. The Funds' management engaged Firm and also engaged Administrator through a separate administration engagement, to prepare and file the Funds' tax returns, including extensions.

The Funds' income tax returns (Treasury Form 1120-RIC) or requests for an automatic extension (Form 7004) were due on Date 4. Firm mistakenly believed that Administrator, rather than Firm, was responsible for preparing and filing the Forms 7004 on behalf of the Funds. Consequently, no Forms 7004 were filed on Date 4. On Date 5, Firm realized that the Forms 7004 for the Funds had not been timely filed. On Date 6, the Funds filed their Forms 1120-RIC and made the elections under §§ 851(b)(1) and 855(a) as required, and Firm began preparing this request for relief under § 301.9100-3 that the elections be considered timely filed.

The Funds intended at all times to elect under § 851(b)(1) to qualify as RICs in their tax returns for the taxable year ended Date 3. Fund 3 also intended to make an election on its tax return under § 855 to treat a portion of its ordinary income dividends paid during the taxable year ended Date 7 as having been paid during the taxable year ended Date 3. As evidence of this intent the Board of Trustees for Fund 3 declared ordinary income dividends in accordance with the requirements of § 855.

The Funds have submitted affidavits of their Chief Financial Officer and of the lead Firm tax advisor to the Funds in support of the requested ruling.

LAW AND ANALYSIS

Section 851(b)(1) provides that a corporation shall not be considered a RIC for any taxable year unless it makes an election to be a RIC on its federal income tax return for the taxable year or has made an election for a previous taxable year. Section 1.851-2(a) of the Income Tax Regulations provides, in part, that the taxpayer shall make its election to be treated as a RIC on its federal income tax return for the first taxable year for which the election is applicable.

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 § 855.

Section 1.855-1(b)(1) provides that a § 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) provides, in part, that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election (defined in § 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) 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 § 301.9100-2. Section 301.9100-3(b) provides that subject to paragraphs (b)(3)(i) through (iii) of § 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 § 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 the Funds have acted reasonably and in good faith, and that the granting of relief will not prejudice the interests of the government. Accordingly, the Funds will be treated as having made timely elections to be RICs under § 851(b)(1) on their federal income tax returns for the taxable year ended Date 3. Further, Fund 3 will be treated as having made a timely election under § 855(a) on its federal income tax return for the taxable year ended Date 3.

This ruling is limited to the timeliness of Funds' elections under §§ 851(b)(1) and 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, no opinion is expressed or implied concerning any federal excise or income tax consequences regarding the Funds. We express no opinion as to whether the Funds have satisfied all of the requirements of either § 851(b)(1) or § 855 and the regulations thereunder. We also express no opinion as to whether the Funds qualify as RICs under subchapter M, part I, of Chapter 1 of the Code.

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

This ruling is directed only to the taxpayers requesting it. Section 6110(k)(3) 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 your authorized representatives.

Sincerely,

/S/

Elizabeth A. Handler
Chief, Branch 1
Office of Associate Chief Counsel
(Financial Institutions & Products)

Enclosures:

Copy of this letter
Section 6110 Copy