

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

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Date:

January 03, 2005

LEGEND

Fund =

Trust =

Investments =

Bank =

Firm =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Dear :

This is in reply to your letter dated November 4, 2004, submitted on behalf of Fund. Fund requests that its election under § 851(b)(1) of the Internal Revenue Code to be treated as a regulated investment company (RIC) beginning with its initial year ending Date 2 be considered timely filed pursuant to § 301.9100-3 of the Procedure and

Administration Regulations. Fund also requests a ruling that it be considered to have timely filed an election under § 855(a) to treat dividends distributed after the close of taxable year ended Date 2 as having been paid during that taxable year.

FACTS

Fund is a series of Trust, a statutory trust registered under the Investment Company Act of 1940, 15 U.S.C. section 80a-1, et seq., as amended. Fund operates as a mutual fund and intends to be treated as a Regulated Investment Company (RIC) pursuant to Subchapter M of the Code for the taxable year ended Date 2.

Investments is responsible for the management and administration of Fund, and has contracts with Bank to provide transfer agent, custody, accounting, and administration services to Fund. Firm serves as tax advisor for Fund, and in that capacity prepares federal and state tax returns, including extensions. Fund's income tax return (Treasury Form 1120-RIC) for the short taxable year Date 1 through Date 2 was due on Date 3, but a request for an automatic extension (Form 7004) was timely filed by Bank on behalf of Fund, thus extending the due date of the return until Date 4. Investments intended to timely file in accordance with the extension granted.

There was uncertainty about whether Bank or Firm was engaged to prepare the income tax return for Fund. As a result, on Date 5 Firm realized that the income tax return for Fund had not been timely filed. Firm immediately began preparation of the income tax return and a request for relief under § 301.9100-3 that its elections under §§ 851(b)(1) and 855(a) be considered timely filed. The return was filed on Date 6.

Fund intended to elect under § 851(b)(1) to qualify as a RIC in its tax return for the year ending Date 2. Fund represents that it has met all of the requirements under § 851 to make the election.

Fund also intended to make an election on its tax return under § 855 to treat certain dividends declared and paid in its second year as if paid in its initial tax year. As evidence of this intent, the Board of Directors for Fund declared dividends in accordance with the requirements of § 855. The amount declared for Fund was in accordance with Fund's policy to distribute any remaining undistributed income and gains necessary to eliminate income and excise taxes under §§ 852 and 4982 for the taxable year ending Date 2.

Fund has submitted affidavits of the Vice President and Treasurer of Trust and of the Tax Manager of Firm 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 Fund has acted reasonably and in good faith, and that the granting of relief will not prejudice the interests of the government. Accordingly, Fund will be treated as having made a timely

election to be a RIC under § 851(b)(1) on its federal income tax returns for the tax year ended Date 2. Further, Fund will be treated as having made a timely election under § 855(a) of the Code on its federal income tax returns for the tax year ended Date 2.

This ruling is limited to the timeliness of Fund's 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 Fund. We express no opinion as to whether Fund has satisfied all of the requirements of either § 851(b)(1) or § 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.

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 returns involved, the director's office will determine Fund's tax liabilities for the year involved. If the director's office determines that Fund's liability is lower, that office will determine the federal income tax effect.

This ruling is directed only to the taxpayer 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