

Internal Revenue Service

Department of the Treasury

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Date:

April 20, 2000

TY:

Legend

Company 1 =

Fund =

Company 2 =

Firm =

State X =

Year 1 =

All =

Substantially All =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Amount 1 =

Amount 2 =

Dear

This responds to a ruling request submitted on February 29, 2000, on behalf of Fund by Company 1, requesting an extension of time pursuant to section 301.9100-1(a) of the Procedure and Administration Regulations for Fund to make an election under section 855(a) of the Internal Revenue Code for Year 1.

FACTS

Company 1 is incorporated in State X. Fund is a portfolio of Company 1 that, pursuant to section 851(g), is required to be treated as a separate corporation. Fund is a registered investment company operating under the Investment Company Act of 1940. Fund serves as an investment vehicle for variable annuity products offered by Company 2. Fund provides holders of the variable annuity accounts with an investment choice for amounts contributed to the contracts. For federal income tax purposes, Fund

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uses a fiscal year ending on Date 1.

Company 2 provides tax return preparation assistance to Company 1 and Fund and, for any transaction involving the payment of dividends by Company 1 and Fund, it also computes and provides notice of any required distribution amounts. Company 1 and Fund then record and process the dividends based on the information provided by Company 2. Fund declared Amount 1 of ordinary dividends and Amount 2 of capital gains dividends on Date 2 and represents that it timely distributed these dividends with the intent that they be covered by an election under section 855(a) and considered to have been paid during Year 1.

As of the close of Year 1, Company 1 consisted of All portfolios of which Substantially All used a different taxable year from Fund's taxable year. Under the customary relationship between Company 1, Fund, and Company 2, Fund relied on Company 2's tax department for advice on the filing of tax returns, including the preparation of all returns and extension requests. In the past, Company 2 has prepared and filed extension requests on behalf of Company 1 and Fund in a timely manner.

By affidavit accompanying Fund's ruling request, Company 2 affirms that it should have filed an extension by Date 3 on behalf of Fund for Year 1. It asserts, however, that due to (1) its tax department's heavy involvement in tax reporting for financial statement purposes for the consolidated group of companies belonging to Company 2 and (2) the fact that Substantially All of Company 1's portfolios use a different taxable year than Fund, an extension request for Fund was not filed on or before Date 3. It further asserts that the failure to file for that extension was inadvertent and that additional control procedures are being implemented to prevent similar errors from occurring in the future.

Company 2 states that it realized its oversight on Date 4. Company 2 immediately notified Company 1 and requested Firm to prepare a ruling request seeking relief under sections 301.9100-1 and 301.9100-3 on behalf of Fund with respect to its election under section 855(a) for Year 1. Absent such relief being granted, Fund will not be considered to have made a timely election under section 855(a) with respect to Year 1.

LAW AND ANALYSIS

Section 855(a)(1) provides, in part, that if a regulated investment company declares a dividend prior to the time prescribed by law (including extensions) for the filing of its return for a taxable year and distributes that amount to its shareholders in the 12 month period following the close of that taxable year (but, no later than the date of the first regular dividend payment made after such declaration), the company may elect in accordance with regulations established by the Secretary to have such amounts considered (except as provided elsewhere in section 855) as having been paid during

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such taxable year.

Section 1.855-1(b)(1) of the Income Tax Regulations provides that an election under section 855(a) is made by a regulated investment company in the return filed for the taxable year. Section 1.855-1(b)(2) provides that, after the expiration of the time for filing the return for the taxable year for which an election is made, such election is irrevocable.

Section 7805(d) provides that, except as otherwise provided, any election under the Code is required to be made at such time and in such manner as the Secretary prescribes.

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 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 Code except subtitles E, G, H, and I.

Section 301.9100-3(a) through (c)(1)(i) sets forth rules that the Internal Revenue Service will use to determine whether, under the facts and circumstances of each situation, the Commissioner will grant an extension 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 tax 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 upon the facts and representations submitted, it is held that Fund has shown good cause for granting a reasonable extension of time to allow it to make an election under section 855(a) on its federal income tax return for Year 1. Accordingly, the time for filing that election is extended to Date 5.

This ruling is limited to the timeliness of Fund's section 855(a) election as reflected on its federal income tax return for Year 1. This ruling does not relieve Fund from any penalty that it may owe as a result of its failure to file its federal income tax return for Year 1 on time. This ruling's application is limited to the facts, Code sections,

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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.

In particular, no opinion is expressed as to whether Fund's liability is not lower in the aggregate for all years 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 district director's office will determine Fund's tax liability for the years involved. If the district director's office determines Fund's liability is lower, that office will determine the federal income tax effect.

Further, no opinion is expressed as to whether Fund, in fact, has satisfied the requirements of section 855 and the regulations thereunder or whether Fund qualifies as a regulated investment company under subchapter M, part I, .

This ruling is directed only to the taxpayer that requested 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 representative.

A copy of this letter must be attached to Fund's original Form 1120-RIC for Year 1 when filed.

Sincerely,
Assistant Chief Counsel
(Financial Institutions & Products)