

## Internal Revenue Service

## Department of the Treasury

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Washington, DC 20224

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Refer Reply To:

CC:FIP:1/PLR-116835-00

Date:

December 27, 2000

### LEGEND

Fund =

State A =

Accountant =

Treasurer =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =

Date 10 =

Date 11 =

Dollar 1 =

Dollar 2 =

Dollar 3 =

Dear :

This is in reply to a letter dated August 11, 2000 requesting a ruling on behalf of Fund. You have requested a ruling that Fund be granted an extension of time under § 301.9100 of the Procedure and Administration Regulations to make an election under § 855(a) of the Internal Revenue Code for Fund's tax year ended Date 1.

## **FACTS**

Fund is registered under the Investment Company Act of 1940, 15 U.S.C. § 80a-1, et seq., as amended, and is organized as a State A Business Trust. Fund has elected to be taxed as a regulated investment company (RIC) under subchapter M, part I, of Chapter 1 of the Internal Revenue Code. Fund has a taxable year ending October 31.

Fund intended to timely file, by Date 2, a Form 7004, Application for Automatic Extension of Time to File a Corporation Income Tax Return, for its tax year ending Date 1. The tax department of Accountant prepared the Form 7004 and sent it to Treasurer for signature and filing. The Form 7004 was signed on Date 3 and put aside for mailing at a later date. On Date 2 the Form 7004 was brought to the mail room with instructions that the form was required to be sent via certified mail that day. However, the certified mail was not brought to the post office until Date 4.

During Date 5, Fund was notified that the Internal Revenue Service had denied Fund's request for an extension of time to file. At that time Accountant began preparing Fund's Form 1120-RIC. The Form 1120-RIC was due on Date 2, but was not filed until Date 6.

On Date 7, the Board of Trustees of Fund adopted a resolution authorizing Fund's treasurer to pay to the shareholders an income dividend in such amount as "necessary to pay the income from current and accumulated undistributed income." On Date 8, Fund paid to the shareholders Dollar 1, an amount intended to include all of Fund's undistributed income for the tax year ended Date 1. During Date 9, Accountant informed Fund that Fund had recognized income exceeding Dollar 1. On Date 10 Fund paid to the shareholders Dollar 2. Fund represents that it made no distributions from income or gains attributable to the fiscal year ending Date 11 prior to Date 10.

Fund's Form 1120-RIC contains a § 855(a) election with respect to Dollar 3, which is equal to Dollar 1 plus Dollar 2.

## **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 tax year, except as provided otherwise by § 855.

Any distribution made from income and gains of the previous year made no later than the first distribution from income and gains of the current tax year is not considered the “first regular dividend payment” under § 855(a). Rev. Rul. 69-445, 1969-2 C.B. 148. In addition, Rev. Rul. 76-328, 1976-2 C.B. 216, holds that the “first regular dividend payment” under § 858(a) is the first dividend payment which exceeds the remaining undistributed earnings and profits of the previous year or for which no election under § 858(a) was made. The language of § 858(a), applying to real estate investment trusts, parallels the language of § 855(a).

Section 1.855-1(b)(1) of the Income Tax Regulations provides that a § 855(a) election must be made in the return filed by the RIC for the tax 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 conclude that Fund has satisfied the requirements for our granting a reasonable extension of time to allow it to make the election under § 855(a). Accordingly, Fund is granted an extension until Date

6 to make an election under § 855(a) on its federal income tax return filed for its tax year ended Date 1.

This ruling is limited to providing an extension of time for filing a § 855(a) election and 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, in fact, has satisfied all of the requirements of § 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 return involved, the district director's office will determine Fund's tax liability for the year involved. If the district 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 taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely yours,

Lon B. Smith  
Acting Associate Chief Counsel  
(Financial Institutions & Products)

Enclosures:

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Section 6110 Copy