

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

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Re:

Person to Contact:

Telephone Number:

Refer Reply To:

CC:DOM:FI&P:1 - PLR-121965-98

Date:

June 2, 1999

Legend:

Fund =
State =

Year 1 =

Year 2 =
Year 3 =

Amount a =

Amount b =
:

This is in reply to a letter dated November 30, 1998, and subsequent correspondence, requesting that Fund be granted an extension of time under § 301.9100-1 of the Procedure and Administration Regulations to make an election under § 855(a) of the Internal Revenue Code.

Fund is organized as a corporation under the law of State and is registered as an open-end management investment company under the Investment Company Act of 1940, 15 U.S.C. § 80a-1, *et seq.*, as amended. Fund uses the calendar year as its taxable year. Fund elected to be treated as a regulated investment company (RIC) under subchapter M, part I, of Chapter 1 of the Code for Year 1. For that year and thereafter, Fund operated in a manner intended to qualify it as a RIC under the Code.

Fund has a board of directors and officers, but it has no employees. Fund directly retains an independent accounting firm to act as its independent auditor and tax return preparer. The accounting firm is responsible for the preparation and review of Fund's tax returns, including any federal income tax elections.

Consistent with Fund's board resolutions, prospectus, financial statements, and distribution practices, Fund intended to make a timely election under § 855(a) to treat certain dividends paid after the close of Year 2 as having been paid during Year 2. The accounting firm responsible for preparing Fund's income tax return for Year 2 timely made a § 855 election on that return to treat Amount a of the dividends Fund distributed in Year 3 as distributed in Year 2. However, due to a clerical error on the return, the accounting firm's election of Amount a was understated by Amount b. Soon thereafter, as a result of an independent review of Fund's returns, Fund discovered the clerical error and applied for the requested relief under § 301.9100-1.

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.

Section 1.855-1(b)(1) sets forth the method of making the election and provides that the election must be made in the return filed by the RIC for the 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.

Section 301.9100-3(a) through (c)(1)(i) sets 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; § 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).

Based on the facts and representations submitted, we conclude that Fund has satisfied the requirements for granting a reasonable extension of time to allow it to make the election under § 855(a). Accordingly, Fund is granted an extension of time until 60 days after the date of this letter to make its § 855(a) election for Year 2.

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 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 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,

Assistant Chief Counsel
(Financial Institutions & Products)

Enclosures:

Copy of this letter
Section 6110 Copy