

## Internal Revenue Service

Department of the Treasury

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Person to Contact:

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Date:

**January 28,2000**

## LEGEND

Fund =

Advisor =

Accountant =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Dear :

This is in reply to a letter dated November 11, 1999, 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 of the Internal Revenue Code for Fund's tax year ended Date 1.

## FACTS

Fund is organized as a State corporation and is registered as a closed-end management investment company under the Investment Company Act of 1940, as amended, 15 U.S.C. § 80a-1 et seq. Fund elected on its initial federal income tax return, for the year ending Date 2, to be taxed as a regulated investment company (RIC) under subchapter M, part I of Chapter 1 of the Internal Revenue Code. Fund has maintained its election and qualification as a RIC in each tax year thereafter. Fund files its federal income tax return on the basis of a calendar year.

Fund retains Accountant as its independent auditor and tax return preparer. Accountant is responsible for preparing and reviewing Fund's tax returns and extension requests, including any applicable federal income tax elections. Fund engages Advisor to provide Fund with overall investment, advisory, and other services, as well as office facilities and personnel necessary to administer Fund. Advisor is responsible for reviewing Fund's tax returns and extension requests, and arranging for execution and timely filing of such returns and extension requests.

Accountant filed for Fund a request for an extension of time for Fund to file its tax return that was received on Date 3 by the Service Center. Accountant prepared Fund's tax return for the year ending Date 1 and sent it to Advisor on Date 4. Advisor intended to retain the return until the dividends necessary to comply with § 855 had been paid. The VP-Taxes of Advisor forwarded the return to a fund accountant of Advisor for holding until payment of the dividends. The forwarding of returns was part of a new system, and there were no formalized procedures in place to keep track of the returns' status once forwarded.

After Fund's tax return was forwarded, the fund accountant's work load increased. On or about Date 5, the VP-Taxes asked the fund accountant for a copy of all returns he was retaining. At that time, the fund accountant notified the VP-Taxes that he had the filing copy of Fund's tax return. Four other returns retained for the same reason had been filed on time. Advisor discussed the situation with Accountant and filed Fund's return on Date 6.

## **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 company 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 elsewhere in the section.

Section 1.855-1(b)(1) of the Income Tax Regulations provides that a § 855 election must be made in the return filed by the company for the tax year. The election should be made by the taxpayer by treating the dividend (or portion thereof) to which such election applies as a dividend paid during the tax 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 tax year. After the time for filing the return for the tax year for which an election is made under § 855(a), the election is irrevocable.

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.

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 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 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.

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.

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,

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Assistant Chief Counsel  
(Financial Institutions & Products)

Enclosures:

Copy of this letter  
Section 6110 Copy