

# Internal Revenue Service

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# Department of the Treasury

Washington, D.C. 20224

Person to Contact:

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**Date:**  
February 20, 2001

## Legend:

Fund	=
Trust	=
State X	=
Advisor	=
Company A	=
Company B	=
Company C	=
Accounting Firm	=
Year 1	=
Year 2	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
Date 6	=
Date 7	=
Date 8	=
Date 9	=

Date 10 =

Date 11 =

a =

Dear

This responds to a letter dated October 19, 2000, submitted on behalf of Fund. Fund requests that its election under § 855(a) of the Internal Revenue Code to treat dividends distributed after the close of a taxable year as having been paid during that taxable year be considered timely filed pursuant to § 301.9100-3 of the Procedure and Administration Regulations.

#### FACTS

Fund is a no-load diversified portfolio of Trust, an open-end management investment company, registered under the Investment Company Act of 1940, 15 U.S.C. § 80a-1, et seq., as amended. Trust was organized in State X in Year 1 as a business trust. Advisor, a wholly owned subsidiary of Company A, is Fund's investment advisor and custodian. Fund elected to be taxed as a regulated investment company (RIC) under Subchapter M of the Code in the tax return filed for its first taxable year ending Date 1, and has subsequently operated in a manner intended to qualify it as a RIC.

Trust has a portfolios administered by Company A. Each of the portfolios has made an election under § 851(a) of the Code to be taxed as a RIC.

Accounting Firm acted as the Fund's independent accountants and was responsible for preparing Fund's income tax returns and extensions. All tax return documents are sent to Company B, a wholly owned subsidiary of Company C, which acts as Fund's sub-administrator pursuant to a Sub-Administration Agreement dated Date 2. Company C provides certain administrative, clerical, and bookkeeping services for Fund, including the timely filing of all necessary tax returns and extensions as prepared by Accounting Firm. Certain employees of Company C are also officers of Fund.

Accounting Firm prepared Fund's Form 7004, Application for Automatic Extension of Time to File Corporation Income Tax Return for the tax year ending Date 3, to extend the time for filing Form 1120-RIC from the original Date 4 due date to Date 5. The extension was sent to Company C and was timely filed with the Service on Date 4.

Subsequent to the filing of the extension, the tax manager at Accounting Firm responsible for preparing Fund's Form 1120-RIC resigned and left at the end of Date 6. A new tax manager at Accounting Firm was assigned to Trust in Date 7, and was delegated responsibility for filing all income tax returns for

all the portfolios of Trust. The new tax manager did not receive from the departing tax manager a list of tax return filing deadlines for the portfolios of Trust. The new tax manager therefore sought to monitor required filings by obtaining a list of Trust's portfolios from an audit manager who was assigned to audit the financial statements of Trust.

The list, however, did not reflect that Fund had a taxable year ending October 31, whereas the other portfolios of Trust had taxable years ending August 31. Consequently, the new manager incorrectly assumed that Fund's taxable year ended August 31, and that all tax returns for the portfolios of Trust for fiscal Year 2, including Fund's return, had been filed by the former tax manager prior to Date 8.

In late Date 9, while organizing files for clients with taxable years ending October 31, the tax manager compared the October year end extensions with the tax returns that were filed. As a result of this review the tax manager realized that the tax return for Fund for the taxable year ending Date 3, had not been filed by the extended deadline. Accounting Firm quickly prepared Fund's return and sent it to Company C, which filed it with the Service on Date 10.

Fund intended to make an election under § 855(a) of the Code to treat dividends paid in the 12-month period following the end of the taxable year ending Date 3 as having been paid during Fund's taxable year ending Date 3. Consistent with this intent, Fund made distributions on Date 11 of ordinary dividends and long term capital gains that it had intended to elect to be treated as paid out of the earnings and profits for the prior fiscal year to fulfill the requirements of § 855.

#### LAW AND ANALYSIS

Section 855(a) of the Code provides that, if a RIC -

(1) declares a dividend prior to the time prescribed by law for the filing of its return for a taxable year (including the period for any extension of time granted for filing such return), and

(2) distributes the amount of such dividend to shareholders in the 12-month period following the close of such taxable year and not later than the date of the first regular dividend payment made after such 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 taxable year, except as provided in subsections (b), (c) and (d).

Section 1.855-1(b)(1) of the Income Tax Regulations 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) of the Procedure and Administration Regulations 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).

#### HOLDING

Based upon the facts presented and representations made by Fund, we hold that Fund has demonstrated good cause for the granting of relief under § 301.9100-3. Accordingly Fund will be treated as having made a timely election under § 855(a) of the Code on its federal income tax return filed for the taxable year ending Date 3.

No opinion is expressed as to whether Fund's tax liability is not lower in the aggregate for the year to which the 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 will determine Fund's tax liabilities for the year involved. If the director determines that Fund's liability is lower, that office will determine the federal income tax effect.

This ruling is limited to the timeliness of Fund's election. 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

returns on time. 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 or implied whether Fund qualifies as a RIC that is taxable under subchapter M, part 1 of the Code.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely yours,  
Acting Associate Chief Counsel  
(Financial Institutions and Products)

Enclosures:

Copy of this letter  
Copy for section 6110 purposes