

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:FIP:3/PLR-150787-01

Date: 11/01/2001

Legend:

Fund	=
State X	=
State Y	=
Accounting Firm	=
Year 1	=
Year 2	=
Year 3	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
Date 6	=
Date 7	=

Dear \_\_\_\_\_,

This letter responds to a letter dated September 20, 2001, 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 was organized in State X in Year 1 and registered under the Investment Company Act of 1940 as an open-end diversified management company. Fund is the successor-in-interest to Fund that was organized in Year 2 in State Y. Fund has been operated in a manner intended to qualify it as a RIC under subchapter M, part 1 of the Code since Year 3. Fund has made the election under under § 855(a) in prior years.

Fund failed to timely file its election under § 855(a) for the taxable year ended Date 1. The election under § 855(a) is required to be filed with the return for the current taxable year. Fund's Form 1120-RIC for the year ended Date 1 was due on Date 2 , which the Fund extended to Date 3.

Accounting Firm has been responsible for preparing Fund's income tax returns and extensions, including the preparation of any desired federal elections. The treasurer of the Fund has been responsible for the final review of the Fund's income tax return and for the timely execution and filing of such returns, including elections. On Date 4, the treasurer telephoned the tax manager at Accounting Firm responsible for preparing Fund's Form 1120-RIC to inquire about its status. The tax manager inspected the Fund's Form 1120-RIC and discovered that the federal filing deadline was actually Date 3 and not Date 5, as noted in Accounting Firm's internal tax return tracking system. On Date 6, the tax manager notified the treasurer that Accounting Firm had failed to finalize the tax return before the extended due date. Fund's Form 1120-RIC for the year ended Date 1 was filed on Date 7.

### 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 subsection (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 in 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 on Date 7 for the taxable year ending Date 1.

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,  
Alice M. Bennett  
Chief, Branch 3  
Office of Associate Chief Counsel  
(Financial Institutions and Products)

Enclosures:

- Copy of this letter
- Copy for section 6110 purposes