

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:FIP:2- PLR144305-01
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December 20, 2001

TY: FYE

Legend

Company =
Fund =
Year 1 =
Day 1 =
Date 1 =
Date 2 =
Date 3 =
Date 4 =
Date 5 =
Date 6 =
Date 7 =
Amount 1 =
Amount 2 =
Director =
Accounting Firm =
Month 1 =

Dear :

This responds to a ruling request submitted on August 10, 2001, on behalf of Fund by Company, requesting an extension of time pursuant to section 301.9100-1(a) of the Procedure and Administration Regulations for Fund to make an election under section 855(a) of the Internal Revenue Code for Year 1.

FACTS

Fund is a portfolio of Company and is a regulated investment company ("RIC") operating under the Investment Company Act of 1940, as amended, 15 U.S.C. section

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80a-1 et seq. Fund elected to be taxed as a RIC under subchapter M, part I of Chapter 1 of the Internal Revenue Code. Fund files its federal income tax return on the accrual basis using a Day 1 year-end.

On Date 2, Company's board of directors approved the liquidation of Fund. On Date 1, Company closed its books on the last day of the accounting period. These books were audited by Accounting Firm and a tax provision prepared for the period ending Date 1. Based on the provision, Fund claimed a dividend paid deduction of Amount 1, which included Amount 2 to be paid in the following fiscal year pursuant to the section 855(a). On Date 3, the shareholders of Company approved the liquidation. The books and records were permanently closed on Date 4, and the shareholder accounts were liquidated.

By affidavit accompanying Fund's ruling request, Company affirms that it should have filed a Form 7004, Application for Automatic Extension of Time to File Corporate Income Tax Return, on behalf of Fund for Year 1. It asserts, however, that due to (1) its tax department's heavy involvement in tax reporting for financial statement purposes in Month 1 and (2) the fact that the Fund had liquidated in Year 1, an extension request for Fund was not timely filed. It further asserts that the failure to file for that extension was inadvertent, as the extensions in Form 7004 were filed for all of Company's other funds except Fund and another liquidated fund.

Company states that it realized its oversight on or about Date 5. Fund filed a request for relief under section 301.9100 on Date 7.

LAW AND ANALYSIS

Section 855(a)(1) provides, in part, that if a regulated investment company declares a dividend prior to the time prescribed by law (including extensions) for the filing of its return for a taxable year and distributes that amount to its shareholders in the 12 month period following the close of that taxable year (but, no later than the date of the first regular dividend payment made after such declaration), the company may elect in accordance with regulations established by the Secretary to have such amounts considered (except as provided elsewhere in section 855) as having been paid during such taxable year.

Section 1.855-1(b)(1) of the Income Tax Regulations provides that an election under section 855(a) is made by a regulated investment company in the return filed for the taxable year. Section 1.855-1(b)(2) provides that, after the expiration of the time for filing the return for the taxable year for which an election is made, such election is irrevocable.

Section 7805(d) provides that, except as otherwise provided, any election under the Code is required to be made at such time and in such manner as the Secretary prescribes.

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 section 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 Code except subtitles E, G, H, and I.

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Section 301.9100-3(a) through (c)(1)(i) sets forth rules that the Internal Revenue Service will use to determine whether, under the facts and circumstances of each situation, the Commissioner will grant an extension for regulatory elections that do not meet the requirements of section 301.9100-2. Section 301.9100-3(b) provides that, subject to paragraphs (b)(3)(i) through (iii) of section 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 section 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 tax 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 upon the facts and representations submitted, it is held that Fund has shown good cause for granting a reasonable extension of time to allow it to make an election under section 855(a) on its federal income tax return for Year 1. Accordingly, the time for filing that election is extended to Date 6.

This ruling is limited to the timeliness of Fund's section 855(a) election as reflected on its federal income tax return for Year 1. 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 return for Year 1 on time. This ruling's application is limited to the facts, Code sections, and regulations cited herein. 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 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 director's office will determine Fund's tax liability for the years involved. If the director's office determines Fund's liability is lower, that office will determine the federal income tax effect.

Further, no opinion is expressed as to whether Fund, in fact, has satisfied the requirements of section 855 and the regulations thereunder or whether Fund qualifies as a regulated investment company under subchapter M, part I,.

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

Sincerely,

William E. Coppersmith
Chief, Branch 2
Office of Associate Chief Counsel
(Financial Institutions & Products)