

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact: _____, ID No.

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Date: May 30, 2008

TY:

Legend:

Trust =
Fund 1 =

Fund 2 =
Funds=
X =
Date 1 =
Date 2 =
Date 3 =

Dear _____ :

This letter is in response to the request of Fund 1 and Fund 2 (collectively Taxpayers) of December 7, 2007, for a private letter ruling requesting extensions of time to elect, under § 565(a) of the Internal Revenue Code, to make consent dividend elections for each taxpayer's taxable year ending Date 1. The request is made under §§ 301.9100-1 and 301.9100-3. This letter supersedes the letter dated April 17, 2008.

FACTS

Fund 1 and Fund 2 are separate funds of Trust, a series fund that is registered under the Investment Company Act of 1940, as amended, and are wholly owned by X. Pursuant to § 851(g) Fund 1 and Fund 2 are treated as separate corporations for tax purposes and file separate federal income tax returns.

Fund 1 commenced operations on Date 2. Fund 2 commenced operations on Date 3. Funds have been treated as regulated investment companies (RICs) beginning with each fund's initial taxable year and for all subsequent taxable years. Funds intend to continue to qualify to be taxed as RICs.

Funds operate with investment objectives that result in their investment in securities issued by . Funds elected to treat any identified as as subject to a mark-to-market treatment pursuant to § 1291. Funds generally distribute all income earned during the taxable year as dividends, but failed to do so for the taxable years ending Date 1.

LAW AND ANALYSIS

Section 565(a) provides that if any person owns consent stock (as defined in § 565(f)(1)) in a corporation on the last day of the taxable year of the corporation, and the person agrees, in a consent filed with the return of the corporation in accordance with the regulations, to treat as a dividend the amount specified in the consent, the amount specified shall, except as provided in § 565(b), constitute a consent dividend for purposes of § 561 (relating to the deduction for dividends paid).

Section 1.565-1(a) of the Income Tax Regulations provides that the dividends paid deduction, as defined in § 561, includes the consent dividends for the taxable year. A consent dividend is a hypothetical distribution (as distinguished from an actual distribution) made by certain corporations (including a RIC) to any person who owns consent stock on the last day of the taxable year of the corporation and who agrees to treat the hypothetical distribution as an actual dividend, subject to specified limitations, by filing a consent at the time and in the manner specified in § 1.565-1(b). Section 1.565-1(b)(3) provides that a consent may be filed not later than the due date of the corporation's income tax return for the taxable year for which the dividends paid deduction is claimed. Under Rev. Rul. 78-296, 1978-2 C.B. 183, the due date for purposes of § 1.565-1(b)(3) includes the extended due date of a return filed pursuant to an extension of the time to file.

Section 301.9100-1(c) provides that the Commissioner of Internal Revenue, in exercising his discretion, may grant a reasonable extension of time under the rules set forth in § 301.9100-3 to make a regulatory election under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I. The term "regulatory election" is defined in § 301.9100-1(b) as an election for which the due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, or announcement published in the Internal Revenue Bulletin.

Section 301.9100-3(a) provides that requests for relief subject to that section will be granted when the taxpayer provides the evidence to establish to the satisfaction of the

Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the government.

Under § 301.9100-3(b)(1)(i), except as otherwise provided, a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer requests relief before the Service discovers the failure to make the regulatory election.

Paragraphs (b)(3)(i) through (iii) of § 301.9100-3 provide that a taxpayer is deemed not to have acted reasonably and in good faith if the taxpayer:

(i) seeks to alter a return position for which an accuracy-related penalty could be imposed under § 6662 at the time the taxpayer requests relief and the new position requires or permits a regulatory election for which relief is requested;

(ii) was informed in all material respects of the required election and related tax consequences, but chose not to file the election; or

(iii) uses hindsight in requesting relief. If specific facts have changed since the due date for making the election that make the election advantageous to a taxpayer, the Service will not ordinarily grant relief. In such a case, the Service will grant relief only when the taxpayer provides strong proof that the taxpayer's decision to seek relief did not involve hindsight.

In the present case, Taxpayers requested relief before the Service discovered the failure to make the regulatory elections properly. Taxpayers are not seeking to alter a return position for which an accuracy-related penalty could have been imposed. Taxpayers did not choose not to file required elections after being informed of them. There is no indication that Taxpayers are using hindsight in requesting relief. Specific facts material to the issue under consideration have not changed since the due date for making the elections that make the elections advantageous to Taxpayers.

Under § 301.9100-3(c)(1), the interests of the government are prejudiced if (1) granting relief would result in the taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made, or, (2) ordinarily, if an affected taxable year is closed by the period of limitations on assessment.

In this case, the interests of the government will not be prejudiced by granting the request for relief. Taxpayers will not have a lower tax liability in the aggregate for any taxable year in which the election applies than Taxpayers would have had if the

elections had been made timely. No taxable year that would be affected by the election, had it been timely made, is closed by the period of limitations on assessment.

Taxpayers acted reasonably and in good faith, and granting relief will not prejudice the interests of the government. Therefore, the requirements of §§ 301.9100-1 and 301.9100-3 have been met.

HOLDING

Taxpayers are granted an extension of 45 days from the date of this ruling to file their consent dividend elections for each taxpayer's taxable year ending Date 1. A copy of this letter should be attached to the amended returns filed reflecting the elections.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In particular, no opinion is expressed with regard to whether any of the Taxpayers qualify as a RIC under subchapter M of the Code.

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

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative(s).

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,
GEORGE BLAINE
Associate Chief Counsel
(Income Tax & Accounting)

DONNA M. CRISALLI
Senior Technician Reviewer, Branch 2