

INTERNAL REVENUE SERVICE

U.I.L. Nos: 0851.01-00
0855.01-00
9100.00-00

Number: **199928025**

Release Date: 7/16/1999

CC:DOM:FI&P:2 PLR-101716-99

April 16, 1999

State =

Fund A =

Fund B =

Fund C =

Firm =

Month =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Dear :

This is in response to a ruling request submitted on behalf of Funds B and C (the "Funds"). The Funds request extensions of time pursuant to §301.9100-1(a) of the Procedure and Administration Regulations to elect under §§ 851 and 855 of the Internal Revenue Code.

FACTS

Fund A is a State corporation that is registered as an open-end diversified management company under the Investment Company Act of 1940. Funds B and C are separate series of Fund A that are treated as separate corporations under §851(h) of the Code.

The Funds commenced on Date 1. They use a fiscal year ending on the last day of Month. The first returns for Funds were due on Date 3.

The Funds have no employees. Firm serves as custodian, transfer agent, administrator and accounting service agent for the Funds. Firm also files their extensions of time (Form 7004) for filing federal corporate income tax returns.

From inception, the Funds intended to be taxed as regulated investment companies ("RICs") under section 851 of the Code. The Funds attached RIC election statements to their initial Forms 1120-RIC and computed their taxable income as RICs on their initial Forms 1120-RIC. Their intention is also reflected on their Forms 7004, which indicates that the type of form for which an extension is requested is Form 1120-RIC.

The due date for the Funds initial income tax returns or requests for extension of time (Form 7004) was Date 3. The Funds retained Firm to file Forms 7004 on their behalf, and the Forms 7004 were mailed on Date 4, some days prior to Date 3. Due to an error by Firm's employees, the Forms 7004 were mailed by certified mail, but without "return receipt requested". Consequently, the Funds have no documentary evidence from the U.S. Postal Service that the forms were received prior to Date 3, the due date. In addition, the forms were mailed to the wrong Internal Revenue Service Center, and the appropriate service center did not receive the forms until after the due date. By letter dated Date 5, the appropriate service center denied the Funds' extensions requested in their Forms 7004. The Funds filed their initial Forms 1120-RIC on Date 6.

The Funds make the following representations:

1. The request for relief was filed by the taxpayer before the failure to make the regulatory election was discovered by the Service.
2. Granting the relief will not 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).

PLR-101716-99

3. The taxpayer did not seek to alter a return position for which an accuracy-related penalty has been or could have been imposed under section 6662 of the Code at the time the taxpayer requested relief and the new position requires or permits a regulatory election for which relief is requested.

4. Being fully informed of the required regulatory election and related tax consequences, the taxpayer did not choose to not file the election.

APPLICABLE LAW

Section 301.9100-1(c) of the regulations 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 deadline 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.

Section 301.9100-3(a) through (c)(1)(i) of the regulations sets 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 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 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 the Funds have shown good cause for granting reasonable extensions of time to allow them to make elections under §§851 and 855 of the Code. Accordingly, the time for filing the elections is extended to Date 6.

PLR-101716-99

No opinion is expressed as to whether any taxpayer's tax liability is not lower in the aggregate for all years to which the regulatory election applies than its 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 the taxpayer's tax liability for the years involved. If the district director's office determines the taxpayer's liability is lower, that office will determine the federal income tax effect.

This ruling is limited to the timeliness of the Funds' elections. This ruling does not relieve Funds from any penalty they may owe as a result of their failure to file their federal income tax returns on time. This ruling's application is limited to the facts, Code sections, and regulations cited herein. No opinion is expressed as to whether The Funds qualify as RICs under subchapter M, part I, of the Code.

A copy of this letter is being forwarded to the service center where Funds file their returns with instructions that although their Form 1120-RICs or extensions to file were not timely filed, Funds are to be treated as having made timely elections under §§851 and 855 of the Code.

Except as specifically provided otherwise, no opinion is expressed on the federal income tax consequences of the transaction described above.

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

In accordance with the terms of a power of attorney on file in this office, the original of this letter is being sent to your authorized representative.

Sincerely yours,

Lon B. Smith
Assistant Chief Counsel
(Financial Institutions & Products)