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Internal Revenue Service

Department of the Treasury

Washington, D.C. 20224

Index Nos.:855.00-00, 9100.00-00

Person to Contact:

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Refer Reply to:
CC:DOM:FI&P:3/PLR-105837-99

Date:
JUL 16 1999

Legend:

Fund =

State X =

Adviser =

Company =

Accounting Firm =

Year 1 =

Date 1

Date 2 =

Date 3 =

Date 4

Date 5 =

Date 6 =

Date 7 =

This responds to a letter dated March 8, 1999, submitted on behalf of Fund. Fund requests that its election under § 855(a) of the Internal Revenue Code to treat dividends distributed after

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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 incorporated in State X during Year 1 and is registered as a closed-end, non-diversified investment company under the Investment Company Act of 1940, 15 U.S.C. § 80a-1, et seq., as amended. Adviser is Fund's investment adviser.

Fund elected to be treated as a regulated investment company (RIC) under Subchapter M of the Code for its first fiscal year ended Date 1, and has subsequently operated in a manner intended to qualify it as a RIC. Fund uses the accrual method of accounting for tax and financial accounting purposes and has an October 31 year-end.

Fund pays income dividends on a monthly basis. Fund pays capital gain dividends once a year, in December, to satisfy its distribution requirements under §§ 852 and 4982. Therefore, for each year since its inception that Fund has had net capital gain as defined in § 1222, Fund has satisfied its distribution requirement under § 852 by making an election under § 855(a).

Company provides certain administrative services to Fund pursuant to a sub-administration contract between Company and Adviser dated Date 2. These administrative services include providing administrative, clerical, and bookkeeping services to Fund as well as preparing and filing Fund's tax returns and extensions. Fund's Treasurer is an employee of Company and has supervisory responsibility over the preparation and filing of Fund's tax returns and extensions. Under Company's internal procedure, Fund's tax returns are prepared by Accounting Firm, reviewed by an employee of Company, and then submitted for the Treasurer's signature. The Treasurer monitors this process using an administration and compliance calendar throughout the year.

On Date 3, the Treasurer received from Accounting Firm Fund's completed local, state, and federal income tax extensions. On the same day, these forms were given to an employee of Company for review. On Date 4, the same employee realized that as the result of a mistake the extension forms had not been filed by their Date 5 due date. Company made this mistake because it was the first year that Company had provided administrative services to Fund, and Fund's tax filing requirements had not yet been incorporated into the control log which lists the tax forms and filing deadlines for each fund.

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After the discovery of the missed filing date, Accounting Firm prepared Fund's Form 1120-RIC and filed the return on Date 6.

Fund intended to make an election under § 855(a) to treat certain dividends paid after the close of its taxable year as having been paid during the taxable year, effective for its taxable year that ended 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 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.

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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 tax year that ended Date 7.

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 district director's office will determine Fund's tax liabilities for the year involved. If the district director's office 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,

Lon B. Smith

Assistant Chief Counsel
(Financial Institutions
and Products)

Enclosures:
Copy of this letter
Copy of section 6110 purposes