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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-101710-99

Date:
MAY 19 1999

Legend:

Fund A =

Fund B =

Fund C =

Fund D =

Trust =

State X =

Adviser =

Accounting Firm =

Year 1 =

Year 2 =

Year 3 =

Year 4

Month 1 =

Month 2 =

Date 1 =

Date 2 =

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Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

This responds to a letter dated December 29, 1998, and subsequent correspondence submitted on behalf of Funds A, B, C, and D (The Funds). Each 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

Trust is a State X business trust registered as an open-end management investment company under the Investment Company Act of 1940, 15 U.S.C. § 80a-1, et seq., as amended. Trust's investment adviser is Adviser.

Each Fund is a series fund of Trust within the meaning of section 851(g)(2) of the Code. Each Fund has previously elected to be treated as a regulated investment company (RIC) under Subchapter M of the Code and has operated in a manner intended to qualify it as a RIC. Each Fund uses the accrual method of accounting for tax and financial accounting purposes and has a June 30 year-end. Fund A was established in Year 1; Fund B was established in Year 2. Fund C and Fund D were both established in Year 3.

Trust has an investment advisory and administration agreement with Adviser. Among other things, Adviser is responsible for the timely filing of all tax returns for each Fund. For the tax year ended Date 1, Adviser intended to file or cause to be filed for each Fund an extension request on Form 7004 by Date 2 (the due date for filing each Fund's federal income tax return). Further, each Fund intended to make elections 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 1.

Fund first hired Accounting Firm in Month 1, Year 4. For the tax year ended Date 1, a representative of Adviser and the Accounting Firm agreed that Accounting Firm would prepare "tax

filings." The matter of extensions was not specifically addressed. Staff of the Accounting firm erroneously assumed that extensions would be prepared by Adviser. Staff of Adviser erroneously assumed that extensions would be prepared by the Accounting Firm. Because of these faulty assumptions, both Adviser and the Accounting Firm failed to file any extension requests for the Funds by Date 2.

When the Accounting Firm realized that neither it nor Adviser had prepared extension requests for the Funds for the tax year ended Date 1, the Accounting Firm informed Adviser. The Accounting Firm filed each Fund's Year 4 federal income tax return on Date 3, before the Date 4 due date that would have applied to such filings had extensions been timely filed.

In accordance with their intention to make the election under § 855(a) for the taxable year ended Date 1, Fund B, Fund C, and Fund D declared the amount of their annual dividends on Date 5, pursuant to a resolution of the Board of Directors passed on Date 6. Dividends were declared and paid to the shareholders of Fund A by Date 7. Dividends were paid to the shareholders of Fund B, Fund C, and Fund D in Month 2, Year 4.

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

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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.

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 each Fund, we hold that each Fund has demonstrated good cause for the granting of relief under § 301.9100-3. Accordingly each 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 1.

No opinion is expressed as to whether each Fund's tax liability is not lower in the aggregate for the year to which the election applies than each 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 each Fund's tax liabilities for the year involved. If the district director's office determines that each Fund's liability is lower, that office will determine the federal income tax effect.

This ruling is limited to the timeliness of each Fund's election. This ruling does not relieve each 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 each Fund. In particular, no opinion is expressed or implied whether each 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