

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- PLR 114626-02

Date:

May 2, 2002

TY:

Legend

Company =

Fund 1 =

Fund 2 =

Fund 3 =

Fund 4 =

Fund 5 =

Fund 6 =

(Hereinafter: "Funds").

Year 1 =

Year 2 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

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Tax Year -
 Secretary of Funds =
 Vice President of the Funds =
 Company's Previous Accounting Firm =
 Company's Previous Accounting Firm's Predecessor =
 Company's Present Accounting Firm =
 Outside Firm =

Dear _____,

This responds to a ruling request submitted on March 14, 2002 on behalf of Company, requesting an extension of time pursuant to section 301.9100-3 of the Income Tax Regulations for Funds to make an election under section 855(a) and, in the case of Fund 3, under section 853(a) of the Internal Revenue Code for Tax Year.

FACTS

Funds are a portfolio of Company and are regulated investment companies ("RICs") operating under the Investment Company Act of 1940, as amended, 15 U.S.C. section 80a-1 et seq. Funds elected to be taxed as RICs under subchapter M, part I of Chapter 1 of the Code. Funds file their federal income tax return on the accrual basis using a December 31 tax year.

For tax years prior to Year 2, Company's previous Accounting Firm (and previously, Accounting Firm's Predecessor) served as tax accountants for the Funds and prepared the Funds' annual forms 1120-RIC ("Forms"). Beginning in Year 2, the Company replaced its accounting firm with its present Accounting Firm ("Accounting Firm"). Accounting Firm has served as tax accountant for Company and has been preparing the Funds' tax returns since Year 2.

Prior to Year 1, The Funds' Controller and Compliance Officer ("CCO") was primarily responsible for signing and filing all applicable tax returns with the Internal Revenue Service ("IRS"), including the Forms for the Funds.

On Date 1, The Funds' then CCO left the Company. Company did not hire another CCO, nor did it designate another individual or position as responsible for signing and filing Company's tax returns and forms. Instead, Company chose to out source many of the CCO's prior duties to Outside Firm. Company's then Vice President of the Funds, whose office was adjacent to the former CCO's office, began signing Funds' Forms, as prepared and forwarded by Company's accountants.

On Date 2, Funds' Vice President left the Company. Since then, for reasons unknown to Secretary of the Funds ("Secretary"), the Forms were sent to her to sign and file with the IRS.

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On Date 3, Company's Accounting Firm forwarded to Secretary the prepared Forms for the Tax Year to sign and file with the IRS. Having limited experience with the handling of the Forms, and noticing that the returns were in bound form, she assumed that the package contained copies of final returns that had already been filed with the IRS. As a result, she set aside the package containing the Forms for filing with other correspondence.

From Date 7 until the present, Secretary has been working almost exclusively on an on-going examination that has demanded a great deal of her time.

On Date 4, while filing correspondence, Secretary discovered that the Forms sent by Company's Accounting Firm on Date 3 were not copies of final returns and that the Forms should have been signed and filed with the Service on Date 6. Secretary immediately notified Company's appropriate individuals, and sought to rectify the situation. Soon thereafter, Company's officers contacted outside counsel for help in the matter. In light of counsel's advice, on Date 5, Secretary signed and filed with the IRS the Forms for each of the Funds, noting on each return that the Funds intend to File a request for an extension of time pursuant to section 301.9100-3 of the Income Tax Regulations to make an election under section 855(a) of the Internal Revenue Code for Tax Year (and, in the case of Fund 3, to file an election under section 853(a) of the Internal Revenue Code).

Each of the Funds otherwise satisfied the requirements for making an election under section 855(a). In addition, Fund 3 otherwise satisfied the requirements for making an election under section 853(a).

Company has taken several steps to ensure that such an oversight does not repeat itself. It has formally designated the Funds' Treasurer as responsible for signing all Forms related to the Funds. Company has also agreed with its Accounting Firm that in the future, Company's Accounting Firm will send the returns to the Treasurer who, in turn, will sign the Forms and returns and return them to Accounting Firm for filing with the IRS. Company believes this should prevent untimely filing of returns in the future.

Funds make the following representations:

1. The request for relief was filed by the Funds before the failure to make the regulatory election was discovered by the Service.
2. Granting the relief will not result in the Funds having a lower tax liability than the Funds would have had if a timely election had been made (taking into account the time value of money).
3. The Funds 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 Funds requested relief and the new position requires or permits a regulatory election for which relief is requested.

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

LAW AND ANALYSIS

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 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.

Section 301.9100-3(a) through (c)(1)(i) of the regulations sets forth rules that the IRS 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 the Funds have shown good cause for granting a reasonable extension of time to allow them to make an election under section 855(a) (section 853(a) in the case of Fund 3), on their federal income tax return for the Tax Year. Accordingly, the time for filing that election is extended to Date 5.

This ruling is limited to the timeliness of Funds' section 855(a) and 853(a) election as reflected on their federal income tax return for Tax Year. This ruling does not relieve Funds from any penalty that they may owe as a result of their failure to file their federal income tax return for Tax Year 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 Funds.

In particular, no opinion is expressed as to whether Funds' tax liability is not lower in the aggregate for all years to which the regulatory election applies than Funds'

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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 Funds' tax liability for the years involved. If the director's office determines Funds' liability is lower, that office will determine the federal income tax effect.

Further, no opinion is expressed as to whether Funds, in fact, have satisfied the requirements of sections 853 and 855 and the regulations thereunder or whether Funds qualify as regulated investment companies under subchapter M, part I.

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

A copy of this letter must be attached to Funds' original Form 1120-RIC for Tax Year.

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

cc: