

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:FIP:B03 / PLR-127723-02

Date:

September 25, 2002

In re:

LEGEND

Fund A =

Fund B =

Fund C =

Fund D =

Fund E =

Fund F =

Fund G =

Fund H =

Fund I =

Fund J =

Fund K =

State X =

Advisor =

Accounting Firm =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Dear :

This responds to a letter dated April 26, 2002, submitted on behalf of Fund A through Fund K (the Funds). The Funds request that their elections 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

The Funds are open-end management investment companies, organized as State X business trusts, and registered under the Investment Company Act of 1940, 15 U.S.C. § 80a-1, et seq., as amended. Each Fund has elected to be treated as a

regulated investment company (RIC) under Subchapter M of the Code. The Funds file their federal income tax returns on a fiscal year basis with a Date 1 year end.

Advisor is responsible for the overall management and administration of the Funds, including the filing of federal income tax returns. The Funds' income tax returns for the taxable year ended Date 2 were due on Date 3. Advisor decided to file an extension (Form 7004) for each Fund. Accounting Firm prepared and delivered the extensions to Advisor before their due date in a package that included other documents that had a later filing due date of Date 4. After quickly scanning the first few documents in the package, the Advisor employee responsible for filing tax documents erroneously assumed that all of the documents in the package shared the Date 4 due date.

Because of the employee's inadvertent mistake, Advisor did not timely file income tax returns for the Funds. During Date 5, Advisor discovered the employee's error and contacted Accounting Firm which filed the Funds' federal income tax returns (Forms 1120-RIC) during Date 6. Those returns included elections under § 855(a) of the Code. Accounting Firm also submitted a request for a Private Letter Ruling that the Funds' elections under § 855(a) be considered timely filed pursuant to § 301.9100-3 of the Procedure and Administration Regulations.

The Funds intended to make timely elections under § 855(a) to treat dividends paid in the 12-month period following the end of the taxable year ending Date 2 as having been paid during each Fund's taxable year ending Date 2. Consistent with this intent, each Fund declared dividends on Date 7, and paid those dividends on Date 8.

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.

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 the Funds, we hold that the Funds have 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 taxable year ending Date 2.

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 director will determine each Fund's tax liabilities for the year involved. If the director 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.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely yours,

ALICE M. BENNETT
Chief, Branch 3
Office of Associate
Chief Counsel
(Financial Institutions & Products)

Enclosures:

Copy of this letter
Copy for section 6110 purposes