

Internal Revenue Service

Department of the Treasury

Number: **200327028**

Release Date: 7/3/2003

Index Number: 855.00-00, 9100.00-00

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:FIP:1/PLR-166936-02

Date:

March 25, 2003

LEGEND

Fund A =

Fund B =

Fund C =

Trust A =

State A =

Accountant =

Advisor =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Dear _____ :

This is in reply to a letter dated December 3, 2002, requesting a ruling on behalf of Fund A, Fund B, and Fund C (individually, a "Fund"). You have requested a ruling that each Fund be granted an extension of time under § 301.9100 of the Procedure and Administration Regulations to make an election under § 855(a) of the Internal Revenue Code for Fund's tax year ended Date 1.

FACTS

Trust A is organized as a State A business trust. Trust A is registered as a management company under the Investment Company Act of 1940, 15 U.S.C. § 80a-1, et seq., as amended (the "1940 Act") and was so registered at all times during the tax year ended Date 1. Each of Fund A and Fund B is a series of Trust A and is a "fund" as defined in § 851(g)(2). Fund C is a single-series State A business trust. Fund C is registered as a management company under the 1940 Act and was so registered at all times during the tax year ended Date 1. Each Fund has elected to be taxed as a regulated investment company (RIC) under subchapter M, part I, of Chapter 1 of the Code. Each Fund uses an accrual method of accounting and has a taxable year ending Date 2.

Advisor serves as each Fund's investment advisor and administrator, and is responsible for filing each Fund's federal income tax return. Advisor is also responsible for filing the returns for ten other mutual funds. On Date 3, Advisor timely filed on behalf of each Fund a Form 7004, Application for Automatic Extension of Time to File a Corporation Income Tax Return, for Fund's tax year ended Date 1. The due date, with extensions, for filing each Fund's return for that tax year was Date 4.

Accountant prepared the return for each Fund for that tax year and sent them to Advisor in Date 5. Advisor's employee in charge of filing each Fund's return ("Employee") placed them in his desk drawer. Employee planned to file them with the Service before Date 4. However, Employee had a serious medical emergency several weeks before Date 4 and did not return to work until two months after Date 4. During Employee's absence, his duties were split among three other Advisor employees. They all were under the impression that Employee had filed each Fund's return, especially because the returns for other mutual funds with later due dates had already been filed.

On Date 6, while the treasurer of the Funds ("Treasurer") was reviewing the draft annual report for Fund C, Treasurer asked Employee for Fund C's tax file. At that point, Treasurer discovered that Fund C's return was still in the tax file and had not been filed. An examination at that time of the tax files for Fund A and Fund B disclosed that their returns likewise still were in their respective tax files and had not been filed. Two days later, on Date 7, each Fund filed its return, in which it made an election under § 855(a).

Each Fund represents that it declared the dividends it intended to be subject to the § 855(a) election prior to Date 4. Each Fund represents that it paid such dividends in the 12-month period following Date 1 and not later than the date of the first regular dividend payment made after the declaration.

LAW AND ANALYSIS

Section 855(a) provides, in part, that if a RIC declares a dividend prior to the time prescribed by law for the filing of its return for a tax year (including the period of any extension of time granted for filing such return), and distributes the amount of the dividend to shareholders in the 12-month period following the close of such tax year and not later than the date of the first regular dividend payment made after the declaration, the amount so declared and distributed shall, to the extent the RIC elects in such return in accordance with regulations prescribed by the Secretary, be considered as having been paid during such tax year, except as provided otherwise by § 855.

Section 1.855-1(b)(1) of the Income Tax Regulations provides that a § 855(a) election must be made in the return filed by the RIC for the tax year. The election should be made by the RIC by treating the dividend (or portion thereof) to which such election applies as a dividend paid during the tax year in computing its investment company taxable income, or if the dividend (or portion thereof) to which such election applies is to be designated by the RIC as a capital gain dividend, in computing the amount of capital gain dividends paid during such tax year.

Section 301.9100-1(c) 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).

CONCLUSION

Based on the facts and representations submitted, we conclude that each Fund has satisfied the requirements for our granting a reasonable extension of time to allow it to make the election under § 855(a). Accordingly, each Fund is granted an extension until Date 7 to make an election under § 855(a) on its federal income tax return filed for its tax year ended Date 1.

This ruling is limited to providing an extension of time for filing a § 855(a) election and does not provide relief from any liability incurred as a result of filing a late return. Except as specifically ruled upon herein, we express no opinion concerning any federal excise or income tax consequences relating to the facts herein under any other section of the Code. For example, we express no opinion as to whether each Fund, in fact, has satisfied all of the requirements of § 855 and the regulations thereunder. We also express no opinion as to whether each Fund qualifies as a RIC under subchapter M, part I, of Chapter 1 of the Code.

Further, no opinion is expressed as to whether each Fund's tax liability is not lower in the aggregate for the year to which the regulatory 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 return involved, the director's office will determine each Fund's tax liability for the year involved. If the director's office determines a Fund's liability is lower, that office will determine the federal income tax effect.

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

Sincerely,

Associate Chief Counsel
(Financial Institutions & Products)

By:

Sharon Galm
Senior Technician Reviewer, Branch 1

Enclosures:

Copy of this letter
Section 6110 Copy

cc: