

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:FIP:B03 / PLR-168541-02

Date:

April 18, 2003

In re:

LEGEND

Fund A =

Fund B =

Fund C =

Fund D =

Fund E =

Company =

State X =

Accounting Firm =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =

Dear :

This responds to a letter submitted on behalf of Funds A through E (the Funds). Each of the Funds 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

Each of the Funds is a State X corporation and is registered as an open-end series management investment company under the Investment Company Act of 1940, 15 U.S.C. § 80a-1, et seq., as amended. Each of the Funds 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 year end of Date 1. Company is responsible for the overall management and administration of the Funds.

The Funds' federal income tax returns (Form 1120-RIC) for the taxable year ended Date 2, were due on Date 3. Company intended to extend the due date of the Funds' federal income tax returns. The responsibility for reviewing and filing the

extensions for the Funds' tax returns rested with Company. Accounting Firm prepared the Funds' extension forms, but failed to send them to Company. Instead, Accounting Firm inadvertently mailed the unsigned extension forms to the Internal Revenue Service. By Date 4, Company realized that the extension forms for the Funds had never been received for Company to review, sign, and file; consequently, the extension requests for the Funds had not been timely filed. Company then immediately advised the Funds and Accounting Firm of the problem and requested Accounting Firm to prepare the Funds' tax returns and a request for relief under § 301.9100-3.

Each of the Funds intended to elect on their federal income tax returns, to the extent necessary, to treat the dividends declared and paid in its taxable year ending Date 5 as paid in the prior taxable year under § 855 of the Code. Each of the Funds declare and pay dividends from net investment income and from net realized capital gains (including net short-term capital gains) as determined in the dividend resolution of each of the Fund's Board of Directors. In accordance with provisions of § 855, the Board of Directors of each of the Funds declared dividends on Date 6. The amounts declared for each fund were in accordance with the Funds' policy to distribute any remaining undistributed income and gains necessary to eliminate income and excise taxes under sections 852 and 4982. Funds A, B, D, and E paid their dividends on Date 7, and Fund C paid its dividends on Date 8. On Date 9, each of the Funds had filed its federal income tax return, including the election under § 855(a).

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 each of the Funds, we hold that each of the Funds has demonstrated good cause for the granting of relief under § 301.9100-3. Accordingly, each of the Funds will be treated as having made a timely election under § 855(a) of the Code on its federal income tax return filed on Date 9 for the Tax Year ending Date 2.

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

This ruling is limited to the timeliness of each of the Fund's election under § 855(a) of the Code. This ruling does not relieve each of the Funds 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 of the Funds. In particular, no opinion is expressed or implied whether each of the Funds 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 one of 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