

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-120568-03

Date:

SEP 15 2003

In re:

LEGEND

Fund =

Company =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =

Date 10 =

Date 11 =

Dear

This responds to a letter dated March 20, 2003, submitted on behalf of Fund. 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

Fund is a closed-end management investment company registered under the Investment Company Act of 1940, 15 U.S.C. § 80a-1, et seq., as amended. Fund has elected to be treated as a regulated investment company (RIC) under Subchapter M of the Code. Fund files its federal income tax returns on a fiscal year basis with a year end of Date 1. Company serves as the administrator of Fund. Among other duties, Company is responsible for preparing and filing Fund's federal income tax return, including any extension request.

Fund's federal income tax return (Form 1120-RIC) for the taxable year ended Date 2, was due on Date 3. Company intended to file a Form 7004 for Fund to obtain an automatic six-month extension of time to file Fund's federal income tax return. With the filing of the extension request, Fund's federal income tax return would have been due on Date 4.

On or around Date 2, Company personnel prepared for Fund a Form 7004 for the taxable year ended Date 2, together with a mailing envelope. The form was signed by the Fund's controller on Date 5, but through inadvertence, the form was not forwarded to the mailroom for delivery to the post office prior to the Date 3 due date. On Date 6, a Company employee discovered the error. Fund was subsequently advised by its public accounting firm to submit a request for relief under § 301.9100-3 that its election under § 855(a) of the Code to treat dividends distributed after the close of a taxable year as having been paid during that taxable year be considered timely filed.

Fund's Board of Directors declared dividends on Date 7 and Date 8. Fund paid those dividends on Date 9 and Date 10, respectively. The amounts declared for Fund were in accordance with Fund's policy to distribute any remaining undistributed income and gains necessary to eliminate income and excise taxes under §§ 852 and 4982.

On Date 11, Fund 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 Fund, we hold that Fund has demonstrated good cause for the granting of relief under § 301.9100-3. Accordingly, Fund will be treated as having made a timely election under § 855(a) of the Code on its federal income tax return filed on Date 11 for the Tax Year ended Date 2.

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

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

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

Enclosures:

Copy of this letter
Copy for section 6110 purposes

cc: