

**Internal Revenue Service**

Department of the Treasury  
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PLR-139805-14

Date:  
January 30, 2015

Legend

Fund 1 =

Fund 2 =

Trust =

State A =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Month 1 =

Year 1 =

Dear :

This is in reply to a letter dated October 15, 2014, submitted on behalf of Fund 1 and Fund 2 (each a "Fund," collectively, the "Funds"). Each Fund requests an extension of time under sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make an election under sections 851(b)(1) and 855(a) of the Internal Revenue Code.

FACTS

Funds are series funds of Trust, a State A business trust registered as an open-end investment company under the Investment Company Act of 1940, 15 U.S.C. 80a-1

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et seq., as amended. From inception, each Fund has operated in a manner intended to qualify it as a regulated investment company (RIC) under subchapter M of the Code.

Funds' federal income tax returns, Forms 1120-RIC, U.S. Income Tax Return for Regulated Investment Companies, for the tax year ended Date 1 (Funds' 1120-RICs) were due Date 2. The tax return preparer filed, for each Fund, a timely request for an extension of time to file (Form 7004, Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns) until Date 3, and delivered Funds' 1120-RICs to Funds' treasurer (Treasurer) for signature. Due to a clerical error in Funds' administrative department, the returns were inadvertently not mailed by Date 3. In late Month 1 of Year 1, Treasurer discovered that the returns had not been filed and proceeded to consult with Funds' legal counsel and CPA firm. Funds' 1120-RICs were filed Date 4.

Each Fund intended to make an election under section 851(b)(1) to be taxed as a RIC and accordingly computed its taxable income as a RIC on its Form 1120-RIC for its taxable year ended Date 1. On this Form 1120-RIC, each Fund also intended to make an election under section 855(a) and accordingly treated dividends declared and distributed in accordance with the limitations set forth in section 855(a)(1) and (2), respectively, as having been paid during its taxable year ended Date 1.

Funds have submitted the affidavit of Treasurer in support of this requested ruling.

The following representations are made in connection with the request for an extension of time:

1. The request for relief was filed before the failure to make the regulatory elections was discovered by the Service.
2. Granting the relief requested will not result in Fund 1 or Fund 2 having a lower tax liability in the aggregate for all years to which the elections apply than it would have had if the elections had been timely made (taking into account the time value of money).
3. Funds do 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 they requested relief and the new position requires or permits a regulatory election for which relief is requested.
4. Being fully informed of the required regulatory elections and related tax consequences, Funds did not choose to not file the elections.

5. Neither Fund is using hindsight by basing this request on knowledge of events occurring after the due date of the elections.
6. No intervening events have occurred to make the elections more advantageous to Funds.

## LAW AND ANALYSIS

Section 851(b)(1) provides that a corporation shall not be considered a RIC for any taxable year unless it makes an election to be a RIC on its federal income tax return for the taxable year or has made an election for a previous taxable year. Section 1.851-2(a) of the Income Tax Regulations provides that the taxpayer shall make its election to be treated as a RIC by computing taxable income as a RIC on its federal income tax return for the first taxable year for which the election is applicable.

Section 855(a) provides that, if a RIC 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 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 301.9100-1(c) of the Procedure and Administration Regulations provides that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election 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. Section 301.9100-1(b) defines a regulatory election 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.

Section 301.9100-3(a) through (c)(1)(i) sets forth rules that the 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 section 301.9100-2. Section 301.9100-3(a) provides that requests for relief subject to this section will be granted when the taxpayer provides the evidence (including affidavits described in section 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Section 301.9100-3(b) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer (i) requests relief under this section before the failure to make the regulatory election is discovered by the Service; (ii) failed to make the election because of intervening events beyond the taxpayer's control; (iii) failed to make the election because, after exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity for the election; (iv) reasonably relied on the written advice of the Service; or (v) reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election. Moreover, a taxpayer will be deemed not to have acted in good faith if the taxpayer (i) seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662 at the time the taxpayer requests relief and the new position requires or permits a regulatory election for which relief is requested; (ii) was informed in all material respects of the required election and related tax consequences, but chose not to file the election; or (iii) uses hindsight in requesting relief.

Section 301.9100-3(c) provides that a reasonable extension of time to make a regulatory election will be granted only when the interests of the government will not be prejudiced by the granting of relief. Section 301.9100-3(c)(i) 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 taxable years affected by the election than the taxpayer would have had if the election had been timely made (taking into account the time value of money). Section 301.9100(3)(c)(ii) provides that the interests of the government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made or any taxable years that would have been affected by the election had it been timely made are closed by the period of limitations on assessment under section 6501(a) before the taxpayer's receipt of a ruling granting relief under this section.

## CONCLUSION

Based upon the facts and representations submitted, we conclude that each Fund has shown good cause for granting a reasonable extension of time to make elections under sections 851(b)(1) and 855(a). Since Funds filed their 1120-RICs on Date 4, each Fund's election to be treated as a RIC for U.S. federal income tax purposes and election to treat dividends declared and distributed in accordance with section 855, as described in this letter, for Funds' taxable years ended Date 1, will be treated as having been timely made, despite having been made after the due date prescribed for making these elections.

This ruling is limited to the timeliness of the filing of Funds' elections under sections 851(b)(1) and 855(a). This ruling's application is limited to the facts,

representations, Code sections, and regulations cited herein. No opinion is expressed regarding any material item or representation on each Fund's Form 1120-RC.

No opinion is expressed with regard to whether the tax liability of Fund 1 or Fund 2 is not lower in the aggregate for all years to which the elections apply than such tax liability would have been if the elections 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 such tax liability for the years involved. If the director's office determines that such tax liability is lower, that office will determine the federal income tax effect.

Except as specifically provided otherwise, no opinion is expressed on the federal income tax consequences of the transaction described above.

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

Sincerely,

Susan Thompson Baker  
Susan Thompson Baker  
Senior Technician Reviewer, Branch 2  
Office of Associate Chief Counsel  
(Financial Institutions & Products)