

Internal Revenue Service

199945047
Department of the Treasury

Index Nos.: 855.00-00, 9100.00-00

Washington, D.C. 20224

Person to Contact:

Telephone Number:

Refer Reply to:

CC:DOM:FI&P:3/PLR-108822-99

Date:

AUG 12 1999

Legend:

Fund A	=	
Fund B	=	
Fund C	=	
Fund D	=	
Fund E	=	J
Trust A	=	
Trust B	=	
State X	=	
State Y	=	
Adviser	=	
Accounting Firm	=	
Date 1	=	
Date 2	=	

Date 3

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Date 4

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Date 5

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Date 6

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This responds to a letter dated May 5, 1999, and subsequent correspondence submitted on behalf of Funds A, B, C, D, and E (the Funds). Each 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 A is a State X corporation and is registered as an open-end management investment company under the Investment Company Act of 1940, 15 U.S.C. § 80a-1, et seq., as amended. Fund B is a separate series of Trust A; Fund C, Fund D, and Fund E are separate series of Trust B. Trust A and Trust B are organized as State Y Business Trusts and are registered as open-end management investment companies under the Investment Company Act of 1940.

Each Fund elected to be treated as a regulated investment company (RIC) under Subchapter M of the Code for its first fiscal year of operation and has subsequently operated in a manner intended to qualify it as a RIC. Each Fund uses the accrual method of accounting for tax and financial accounting purposes and has an October 31 year-end.

Each of the Funds has a board of directors and officers, but no employees. The Funds have engaged Adviser to provide the Funds with overall investment advisory and other services, as well as office facilities and personnel necessary to administer the Funds. These services include the performance of certain accounting functions for which Adviser directly employs experienced mutual fund accounting professionals to perform such services. The Funds directly retain Accounting Firm to prepare tax returns and as their independent auditor. Accounting Firm is responsible for the preparation and review of each Fund's federal, state, and local tax returns, including extension requests, and any applicable elections. Adviser is responsible

for reviewing the Funds' tax returns and extension requests and arranging for execution and timely filing of those returns and extension requests.

For the taxable year ended Date 1, each of the Funds declared and paid dividends by Date 2. Consistent with the Funds' prospectuses, financial statements, and distribution practices, each of the Funds intended to make a timely election under § 855(a) of the Code to treat certain dividends paid after the close of its taxable year as having been paid during the taxable year that ended Date 1. This election should have been made on the federal income tax return, due on Date 3, for each of the Funds.

Accounting Firm prepared a federal income tax extension request for each of the Funds, and on Date 4 sent them via courier to Adviser. Internal restructuring and the implementation of a new accounting system, complicated by the fact that a key member of Adviser's financial department was on extended sick leave, strained Adviser's ability to perform certain functions; consequently, Adviser inadvertently failed to file each Fund's federal income tax extension requests by Date 3. On Date 5, an inquiry by an employee of Accounting Firm led to the discovery that the extension requests had not been filed. Upon discovering the failure to timely file the extension requests, Accounting Firm immediately commenced preparation of the Form 1120-RIC for each of the Funds. The returns were filed on Date 6.

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 Fund, we hold that each Fund has 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 tax year that ended Date 1.

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 district director's office will determine each Fund's tax liabilities for the year involved. If the district director's office determines that any 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 under § 855(a) of the Code. 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.

Sincerely yours,



Assistant Chief Counsel
(Financial Institutions
and Products)

Enclosures:

- Copy of this letter
- Copy of section 6110 purposes