

**INTERNAL REVENUE SERVICE**

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U.I.L. Nos: 0851.00-00  
              0855.00-00  
              9100.00-00

CC:FIP:2 PLR-115628-00

December 15, 2000

State 1 =

State 2 =

Fund =

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PLR-115628-00

Agent =

Manager =

Firm =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =

Date 10 =

Date 11 =

Month =

Dear :

This is in response to a ruling request submitted on behalf of Funds through (collectively, "Funds"). Funds request extensions of time pursuant to §301.9100-1(a) of the Procedure and Administration Regulations to elect under section 855(a) of the Internal Revenue Code, and Funds through also request extensions of time to elect under section 851(b).

FACTS

Funds are organized as business trusts under the law of either State 1 or State 2 and are registered as open-end diversified management companies under the Investment Company Act of 1940, 15 U.S.C. section 80a-1 et. seq. Each Fund is treated

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as a separate corporation under §851(g) of the Code. From their inception, Funds have operated in a manner intended to qualify them as regulated investment companies ("RICs") under Part I of Subchapter M of the Code. Funds intend to be treated as RICs by computing taxable income as RICs for their taxable years ended Date 1.

Extensions of time (Forms 7004) for filing the Funds' federal income tax returns for the taxable year ended Date 1 were due on Date 2. Agent prepared the extensions before the due date and sent them to Manager for signature and filing. The extensions were signed on Date 3, four days before Date 2, and were put aside for mailing. On Date 2 the extensions went to the mail room with instructions that the returns had to be sent by certified mail that day. It was not until Date 4, however, that the extensions were sent to the United States Postal Service and a certified mail receipt with a postmark was obtained.

Beginning on or about Date 5, and continuing through Date 6, Funds began receiving notices from the IRS Service Center that their requests for extensions of time were denied. Some Funds never received notices, and it was assumed that the notices were lost in the mailing process.

Initially, it was not known to what extent the IRS would reject the extensions of time to file Forms 1120-RIC; they were filed only one day late. By Date 6 it was apparent that the position of the Service Center was that they were all invalid, even though rejection notices for some of the Funds were not received. In Month, the Funds' management initiated consultations with Firm as to how to remedy the situation, and it was agreed to request relief pursuant to section 301.9100 of the regulations.

Firm is composed of professional tax advisers. It became involved with Funds' failures to elect in Month, when Firm was contacted by Agent. Firm advised Agent to file returns immediately, and that administrative relief under section 301.9100 of the regulations would have to be requested.

The majority of Funds filed their returns between Dates 7 and 8, and all Funds had filed their returns by Date 9, the date the returns would have been due had the requests for extensions to file the returns been timely filed.

Funds filed their request for relief under section 301.9100 of the regulations on Date 10. After some of Funds began receiving the notices that their Forms 7004 were being denied, Funds investigated the extent of the problem; discussed the matter internally with the Funds' management to assess its consequences; consulted with their outside adviser, Firm, as to

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the most appropriate manner to remedy the situation; and committed the necessary resources to the preparation and filing of the request for relief under section 301.9100.

All of the Funds had declared and paid dividends by Date 11, 1999.

Funds make the following representations:

1. The request for relief was filed by the Funds before the failure to make the regulatory elections were discovered by the Service.
2. Granting the relief will not result in each of the Funds having a lower tax liability in the aggregate for all years to which the regulatory election applies than each Fund would have had if the election had been timely made (taking into account the time value of money).
3. The 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 the taxpayers 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 election and related tax consequences, the Funds did not choose to not file the election.

#### APPLICABLE LAW

Section 301.9100-1(c) of the regulations provides, in part, that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election (defined in section 301.9100-1(b) as an election whose deadline 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.

Section 301.9100-3(a) through (c)(1)(i) of the regulations sets 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 section 301.9100-2. Section 301.9100-3(b) provides that subject to paragraphs (b)(3)(i) through (iii) of section 301.9100-3, when a taxpayer applies for relief under this section before the failure to make the regulatory election is discovered by the

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Service, the taxpayer will be deemed to have acted reasonably and in good faith; and section 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 upon the facts and representations submitted, it is held that Funds through have shown good cause for granting a reasonable extension of time to allow them to make an election under §855(a) of the Code, and Funds through have shown good cause for granting them a reasonable extension of time to allow them to make an election under §851(b). Accordingly, the time for filing the elections is extended to Date 4.

No opinion is expressed as to whether the taxpayer's tax liability is not lower in the aggregate for all years to which the regulatory election applies than its 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 the taxpayer's tax liability for the years involved. If the district director's office determines the taxpayer's liability is lower, that office will determine the federal income tax effect.

This ruling is limited to the timeliness of Funds' elections. This ruling does not relieve Funds from any penalties they may owe as a result of their failures to file their federal income tax returns on time. This ruling's application is limited to the facts, Code sections, and regulations cited herein. No opinion is expressed as to whether Funds qualify as RICs under subchapter M, part I, of the Code.

A copy of this letter is being forwarded to the service center where Funds file their returns with instructions that although their returns were not timely filed, Funds are to be treated as having made timely elections under §855(a) and §851(b) of the Code.

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.

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In accordance with the terms of a power of attorney on file in this office, the original of this letter is being sent to you and copies are being sent to your authorized representatives.

Sincerely yours,

Richard Carlisle

Acting Deputy Associate Chief Counsel  
(Financial Institutions & Products)