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Internal Revenue Service

Department of the Treasury

Index Nos: 0851.01-00
9100.00-00

Washington, D.C. 20224

Person to Contact:

Telephone Number:

Refer Reply to:
CC:DOM:FI&P:1 - PLR-111610-99
Date: October 13, 1999

Legend

Fund =

State =
date 1 =
date 2 =
date 3 =
date 4 =
date 5 =
date 6 =

date 7 =

date 8 =

date 9 =

Accountant =
19xx =

Dear:

This is in reply to a letter dated June 17, 1999, and subsequent correspondence, submitted on behalf of Fund requesting an extension of time to make an election under § 851(b)(1) of the Internal Revenue Code to be treated as a regulated investment company (RIC) beginning with its initial taxable year. Fund requests that its election be considered timely filed pursuant to §§ 301.9100-1 and -3 of the Procedure and Administration Regulations.

FACTS

Fund is registered with the Securities and Exchange Commission as an investment company under the Investment Company Act of 1940, 15 U.S.C. § 80a-1, et seq. Fund was created under

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State law. It adopted a tax year ending March 31 and the accrual method of accounting. Fund intended to qualify annually as a RIC, as defined in § 851, beginning with its initial taxable year.

Fund commenced operations on date 1. Fund's first taxable year ended on date 2. Fund's federal income tax return for its first taxable year was due date 3.

Fund engaged Accountant in September, 19xx to prepare Fund's initial audit and federal income tax return. The Accountant tax manager assigned to Fund timely filed a Form 7004, Application for Automatic Extension of Time to File Corporation Income Tax Return, on behalf of Fund extending the due date to date 7.

On date 4, Fund engaged a new administrator. On date 5, the Accountant tax manager assigned to Fund resigned from Accountant and failed to notify anyone that the Fund tax return for the initial tax year had not yet been prepared. On date 6, Accountant resigned as accountant for Fund and was replaced by another accounting firm. On date 8, Fund received a notice from the Internal Revenue Service that it had not received an income tax return for Fund's initial taxable year ending date 2. The notice was forwarded to Accountant. Upon concluding that an income tax return had not been filed for Fund's initial tax year, Accountant prepared a return, which was filed by date 9. The return contained an election under § 851(b)(1) to be treated as a RIC.

LAW

Section 851(b)(1) provides that a corporation shall not be considered a RIC for any taxable year unless it files with its return for the taxable year an election to be a RIC or has made such election for a previous taxable year.

Section 1.851-2(a) of the Income Tax Regulation provides that the taxpayer shall make its election to be treated as a RIC by computing taxable income as a RIC in its federal income tax return for the first taxable year for which the election is applicable.

Section 301.9100-1(c) 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).

CONCLUSION

Based on the information provided and the representations made, we hold that Fund has satisfied the requirements for the granting of a reasonable extension of time under §§ 301.9100-1 and -3. Therefore, Fund will be treated as having made a timely election under § 851(b)(1) on its federal income tax return filed for the tax year that ended on 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 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 Fund's tax liability for the year involved. If the district director's office determines Fund's liability is lower, that office will determine the federal income tax effect.

Except as specifically ruled upon herein, no opinion is expressed or implied as to any federal income tax consequences regarding Funds. 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 taxpayers who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely yours,

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Assistant Chief Counsel
(Financial Institutions & Products)

Enclosures:
Copy of this letter
Section 6110 copy

CC: