

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-111441-00

Date:

August 24, 2000

Legend:

Fund	=
Company A	=
Company B	=
Company C	=
Bank	=
State X	=
State Y	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
Date 6	=
Year	=
<u>x</u>	=

Dear :

This responds to a letter dated April 21, 2000, submitted on behalf of Fund. Fund requests that its election under §565 of the Internal Revenue Code to make a consent dividend be considered timely filed pursuant to §301.9100-3 of the Procedure and Administration Regulations.

Facts

Company A was incorporated on Date 1 in State X. It is an open-end management investment company with its principal place of business in State Y. Fund is a separate fund in a series of six separately managed funds offered by Company A. Fund commenced operations on Date 2. Fund is offered as an investment option to separate accounts of Company B and Company C. Fund is registered under the Investment Company Act of 1940, 15 U.S.C. §80a-1, *et seq.*, as amended.

Since its inception, Fund has operated in a manner intended to qualify it as a Regulated Investment Company (RIC) under §851 of the Code. Fund has elected to be treated as a RIC for tax purposes. Fund uses the calendar year as its tax year.

Bank provides certain administrative and accounting services to Fund. On Date 3, Bank incorrectly recorded a tax-free merger on Fund's books as a result of an incorrect conversion factor. On Date 4, the error was discovered. That same day, a manual correction was posted, but the manual correction itself was incorrect. As a result, a capital loss of x was recorded on Fund's books. This left Fund's Year income understated by x .

Fund filed its federal income tax return for Year in a timely manner on or before Date 5. The error was discovered on Date 6, by which time it was too late to make either a §855 election to treat certain dividends paid after the close of the taxable year as having been paid during the taxable year or a §565 consent dividend election.

Law and Analysis

Section 565 provides that—

a) GENERAL RULE— If any person owns consent stock (as defined in subsection (f)(1)) in a corporation on the last day of the taxable year of such corporation, and such person agrees, in a consent filed with the return of such corporation in accordance with regulations prescribed by the Secretary, to treat as a dividend the amount specified in such consent, the amount so specified shall, except as provided in subsection (b), constitute a consent dividend for the purposes of section 561 (relating to the deduction for dividends paid).

Section 1.565-1 of the Income Tax Regulations sets forth the general rule, form, and method for a company that wishes to elect a consent dividend. This section provides that only certain companies may make a consent dividend election. It further provides that only the actual holder of corporate stock on the last day of the corporation's taxable year may give consent. Section 1.565-1 provides that the deadline for filing this election is the due date of the corporation's income tax return for the taxable year for which the dividends paid deduction is claimed. Under Rev. Rul. 78-296, 1978-2 C.B. 183, the deadline for making the election includes extensions. The election must be filed on Forms 972 and 973.

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 §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.

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 §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 an extension under §301.9100-3 to make a consent dividend election under §565 of the Code. This extension shall be for a period of 45 days from the date of this ruling. A copy of this ruling must be attached to Forms 972 and 973.

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 District Director will determine Fund's tax liabilities for the year involved. If the District Director determines that Fund's liability is lower, that office will determine the federal income tax effect.

This ruling is limited to the granting of an extension to make a consent dividend election. Except as specifically ruled upon, no opinion is expressed or implied as to any federal tax consequences regarding Fund. Specifically, no opinion is expressed or implied as to whether Fund qualifies as a RIC that is taxable under subchapter M, part 1 of the Code.

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

Sincerely Yours,
Acting Associate Chief Counsel
(Financial Institutions and Products)

Enclosure:

Copy for §6110 purposes