

INTERNAL REVENUE SERVICE

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CC:FIP:2 PLR-112141-00

November 9, 2000

Trust =

State =

Fund 1 =

Fund 2 =

Fund 3 =

Fund 4 =

Fund 5 =

Fund 6 =

Fund 7 =

Fund 8 =

Agent =

Firm =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Year =

Dear :

This is in response to a ruling request submitted on behalf of Funds 1, 2, 3, 4, 5, 6, 7, and 8 (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.

FACTS

Funds are portfolios of Trust, are organized as business trusts under State law, 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 as a separate corporation under §851(g) of the Code. From their inception, Funds have operated in a manner intended to qualify

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them as regulated investment companies ("RICs") under Part I of Subchapter M of the Code.

Agent is responsible for preparation of the first draft of Funds' tax returns, including any federal income tax elections. Firm is responsible for the detailed review of Funds' tax returns. Agent is then responsible for final review of the returns and arranging for execution and timely filing of the returns.

Due to an administrative oversight by Agent, Funds' initial returns with their elections under section 855(a) of the Code were not timely filed.

Funds' initial taxable years ended on Date 1. The due date for their initial income tax returns was Date 2. Agent neglected to file Forms 7004, automatic six-month extensions of time, for filing Funds' returns.

On Date 3, Agent discovered it had not filed Form 7004 for any of Funds.

Firm is composed of professional tax advisers. It became involved with Funds' failures to elect two days after Date 3, 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.

Agent took immediate action to prepare and review Funds' income tax returns and forward them to Firm. After Firm's review, Agent had the appropriate officers of Funds execute the returns, and Agent mailed the returns to the appropriate Internal Revenue Service service center on Date 4. The returns made the election under section 855(a) of the Code.

Agent initially undertook preparing the requests for extension of time under section 301.9100 of the regulations, although it had no prior experience with such requests. In December of Year, Firm provided Agent with electronic documents to assist them with the preparation of the requests under section 301.9100.

Between December of Year and the following April, Agent was involved with year-end tax work for Funds and other clients. Upon realization of the magnitude of the requirements involved in filing requests under section 301.9100, Agent enlisted the aid of Firm to complete filing the requests. Firm thus became involved with filing the requests in April, and submitted the requests on Date 5.

Funds make the following representations:

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

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Based upon the facts and representations submitted, it is held that Funds have shown good cause for granting a reasonable extension of time to allow them to make an election under §855(a) of the Code. Accordingly, the time for filing the election 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) 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.

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 the second-named authorized representative on the submitted power of attorney and to the appropriate officer of the taxpayer.

Sincerely yours,

Lon B. Smith

Acting Associate Chief Counsel
(Financial Institutions & Products)