

INTERNAL REVENUE SERVICE

Index Nos: 0851.01-00  
          9100.00-00

Number: **199945020**

Release Date: 11/12/1999

CC:DOM:FI&P:1 - PLR-109463-99

DATE: August 12, 1999

Legend

Trust =  
Fund A =  
  
Fund B =  
  
date 1 =  
  
date 2 =  
date 3 =  
date 4 =  
date 5 =  
date 6 =  
  
Accountant =

Dear:

This is in reply to a letter dated April 16, 1999, and subsequent correspondence, submitted on behalf of Fund A and Fund B (Funds) requesting an extension of time for each Fund 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. Each Fund requests that its election be considered timely filed pursuant to §§ 301.9100-1 and -3 of the Procedure and Administration Regulations.

FACTS

Trust 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 A and Fund B are each organized as a separate series of Trust. Each is treated as a separate corporation for federal tax purposes under § 851(g). Each Fund seeks to qualify annually as a RIC, as defined in § 851, beginning with its initial taxable year.

For each Fund to qualify as a RIC, it must so elect by computing its taxable income as a RIC on Form 1120-RIC for its first taxable year for which it seeks to be treated as a RIC.

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Funds commenced operations on date 1. Funds' first taxable year ended on date 2,

Each Fund's federal income tax return for its first taxable year ended on date 2 was due date 4. Funds asked Accountant to prepare and file a Form 7004, Application for Automatic Extension of Time to File Corporation Income Tax Return, on behalf of each Fund. On or before date 3, Accountant finished preparing extension requests on behalf of the Funds with the intention that the extensions would be filed no later than date 4.

On date 3, each extension was placed in an envelope that was properly addressed to the Internal Revenue Service. Each envelope was prepared to be sent by certified mail with a return receipt. Then, pursuant to established procedures regarding the handling of outgoing mail by Accountant, the envelopes were sent to the mailroom with instructions that they had to be mailed that day. Mailroom personnel affixed postage to the envelopes and mailed them that day.

Nine days later, on date 5, the envelopes containing Funds' extensions were returned to Accountant's mailroom by the United States Postal Service, indicating that insufficient postage had been affixed to the envelopes. Mailroom personnel immediately informed appropriate persons at Accountant that the envelopes had been returned. As soon as the error was discovered Accountant began to prepare a tax return for each Fund. The Funds' tax returns for the tax year ended date 2 were mailed to the Internal Revenue Service on date 6.

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

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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 each Fund has demonstrated good cause for the granting of a reasonable extension of time under §§ 301.9100-1 and -3. Therefore, each 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 each 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 each Fund's tax liability for the year involved. If the district director's office determines a 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 either 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.

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Sincerely yours,

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Assistant Chief Counsel  
(Financial Institutions & Products)

Enclosures:

Copy of this letter  
Section 6110 copy