199945052

Internal Revenue Service

Department of the Treasury

Washington, D.C. 20224

Index Nos.:853.00-00 855.00-00,
9100.00-00

Person to Contact:

Telephone Number:

Refer Reply to:
CC:DOM:FI&P:3/PLR-108832-99
Date:
AUG 13 1999

Legend:

Fund =

Trust

State X =

Adviser =

Accounting Firm =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

This responds to a letter dated May 5, 1999, and subsequent correspondence submitted on behalf of Fund. Fund requests that its election under § 853(a) of the Internal Revenue Code to allow its shareholders to treat foreign taxes paid by Fund as if they had been paid by the shareholders be considered timely filed pursuant to § 301.9100-3 of the Procedure and Administration Regulations. Fund also requests that its election under § 855(a)

of the Code to treat dividends distributed after the close of a taxable year as having been paid during that taxable year be considered timely filed pursuant to § 301.9100-3.

FACTS

Fund is a separate series of Trust. Trust was organized as a State X Business Trust and is registered as an open-end management investment company under the Investment Company Act of 1940, as amended, 15 U.S.C. Section 80a-1 et seq.

Fund elected under § 851(b)(1) of the Code to be treated as a regulated investment company (RIC) under Subchapter M of the Code for its initial year of operation and has subsequently operated in a manner intended to qualify it as a RIC. Fund uses the accrual method of accounting for tax and financial accounting purposes and has an October 31 year-end.

Fund has a board of directors and officers, but no employees. Fund has engaged Adviser to provide Fund with overall investment advisory and other services, as well as office facilities and personnel necessary to administer Fund. These services include the performance of certain accounting functions for which Adviser directly employs experienced mutual fund accounting professionals to perform such services. Fund directly retains Accounting Firm to prepare tax returns and to be its independent auditor. Accounting Firm is responsible for the preparation and review of Fund's federal, state, and local tax returns, including extension requests, and any applicable elections. Adviser is responsible for reviewing Fund's tax returns and extension requests and arranging for execution and timely filing of those returns and extension requests.

For the taxable year ended Date 1, Fund declared dividends on Date 3 and distributed them on Date 4. Consistent with Fund's prospectuses, financial statements, operations, and distribution practices, Fund intended to make a timely election under § 855(a) of the Code to treat certain dividends paid after the close of its taxable year as having been paid during the taxable year that ended Date 1. Additionally, it has been Fund's policy to make an election under § 853(a) to allow its shareholders to treat foreign taxes paid by Fund as if they had been paid by the shareholders. Accordingly, for the taxable year ended Date 1, Fund reported to its shareholders each shareholder's proportionate share of the foreign taxes paid by Fund during that taxable year as if an election under § 853(a) had been made. These elections under §§ 853(a) and 855(a) should have been made on Fund's federal income tax return, due on Date 2.

Accounting Firm prepared a federal income tax extension request for Fund and on Date 5 sent it via courier to Adviser. Internal restructuring and the implementation of a new accounting system, complicated by the fact that a key member of Adviser's financial department was on extended sick leave, strained Adviser's ability to perform certain functions; consequently, Adviser inadvertently failed to file Fund's federal income tax extension request by Date 2. On Date 6, an inquiry by an employee of Accounting Firm led to the discovery that the extension request had not been filed. Upon discovering the failure to timely file the extension request, Accounting Firm immediately commenced preparation of the Form 1120-RIC for Fund. The return was filed on Date 7.

LAW AND ANALYSIS

Section 853 of the Code provides, in part, that if (i) more than 50 percent of the value (as defined in § 851(c)(4)) of the total assets of a RIC at the close of the taxable year consists of stock or securities in foreign corporations, and (ii) the RIC meets the requirements of § 852(a) for the taxable year, the RIC may elect the application of § 853(a) with respect to income, war profits, and excess profits taxes described in § 901(b)(1), which are paid by the investment company during such taxable year to foreign countries and possessions of the United States. Section 853(c) requires a RIC making an election under § 853(a) to provide its shareholders with a written notice mailed no later than 60 days after the close of its taxable year, designating each shareholder's proportionate share of the amount of foreign taxes passed through to shareholders of the RIC during the taxable year of the RIC.

Section 1.853-4 of the Income Tax Regulations sets forth the manner in which a RIC may make an election under § 853(a) of the Code. An election under § 853(a) must be made not later than the time prescribed for filing the return (including extensions thereof).

Section 855(a) of the Code provides that, if a RIC -

(1) declares a dividend prior to the time prescribed by law for the filing of its return for a taxable year (including the period for any extension of time granted for filing such return), and

(2) distributes the amount of such dividend to shareholders in the 12-month period following the close of such taxable year and not later than the date of the first regular dividend payment made after such declaration,

the amount so declared and distributed shall, to the extent the company elects in such return in accordance with regulations prescribed by the Secretary, be considered as having been paid during such taxable year, except as provided in subsections (b), (c) and (d).

Section 1.855-1(b)(1) of the regulations sets forth the method of making the election and provides that the election must be made in the return filed by the RIC for the taxable year.

Section 301.9100-1(c) of the Procedure and Administration 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.

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).

HOLDING

Based upon the facts presented and representations made by Fund, we hold that Fund has demonstrated good cause for the granting of relief under § 301.9100-3. Accordingly, Fund will be treated as having made timely elections under §§ 853(a) and 855(a) of the Code on its federal income tax return filed for the tax year that ended Date 1.

No opinion is expressed as to whether Fund's tax liability is not lower in the aggregate for the year to which the elections

apply than Fund's tax liability would have been if the elections 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 that Fund's liability is lower, that office will determine the federal income tax effect.

This ruling is limited to the timeliness of Fund's elections under §§ 853(a) and 855(a) of the Code. This ruling does not relieve Fund from any penalty that it may owe as a result of its failure to file its federal income tax return on time. Except as specifically ruled upon above, no opinion is expressed or implied as to any federal excise or income tax consequences regarding Fund. 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 taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely yours,

Lon B. Smith

Assistant Chief Counsel
(Financial Institutions
and Products)

Enclosures:
Copy of this letter
Copy for section 6110 purposes