

**Internal Revenue Service**

Department of the Treasury

Number: **200329017**  
Release Date: 7/18/2003  
Index Nos.: 855.00-00, 9100.00-00

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

**CC:FIP:B03 / PLR-166689-02**

Date:

**April 3, 2003**

In re:

**LEGEND**

Fund =

Company =

State X =

Advisor =

Accounting Firm =

Law Firm =

a =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Dear :

This responds to a letter dated December 5, 2002, submitted on behalf of Fund. Fund requests that its election under § 855(a) of the Internal Revenue 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 of the Procedure and Administration Regulations.

### FACTS

Fund is an investment portfolio of Company, a State X corporation that is registered as an open-end series management investment company under the Investment Company Act of 1940, 15 U.S.C. § 80a-1, et seq., as amended. Fund has elected to be treated as a regulated investment company (RIC) under Subchapter M of the Code. Fund files its federal income tax returns on a fiscal year basis with a year end of Date 1. Advisor serves as the investment advisor for Fund and the other portfolios of Company.

In addition to retaining the services of Accounting Firm for Company, Advisor maintains in-house accounting and tax departments to prepare and file federal tax returns for the investment portfolios it manages, including Fund. Accounting Firm reviews all of the federal income tax returns filed by Advisor on behalf of Company, but does not review applications for extensions of time to file.

Fund is a money market fund. To maintain a constant net asset value of a per share, Fund declares dividends daily and pays them monthly. As of Date 2, the first business day after the close of the Tax Year ended Date 6, Fund had declared dividends in the amount of its undistributed investment company taxable income for the Tax Year ended Date 6, and Fund paid the dividends on Date 3. As it had done in prior years, Fund intended to make the § 855(a) election with respect to these dividends when it filed its federal income tax return. Fund's federal income tax return for the Tax Year ended Date 6 was due on Date 4. Fund intended to file Form 7004, Application for Automatic Extension of Time to File, by that date. Advisor represents that it was aware of Fund's intention to make the § 855(a) election and that it was Advisor's responsibility to file Form 7004 for Fund.

Advisor, however, failed to file timely Form 7004 on behalf of the Fund as it had planned. During the course of the Tax Year ended Date 6, several of the entities serviced by the Advisor were subject to ongoing compliance audits. Thus, Advisor found it necessary to reassign work within its tax department and to substantially increase the workload of each accountant. The accountants responsible for filing the Fund's Federal income tax returns for Tax Year ended Date 6 were not accustomed to performing these other functions. Consequently, Advisor inadvertently failed to file timely Form 7004.

Advisor discovered its error in the week following the due date for Fund's return. Advisor immediately prepared Fund's federal income tax return, disclosing Fund's intention to make the § 855(a) election and to seek relief under § 301.9100-3. Fund's federal income tax return was filed on Date 5. Fund contemporaneously notified Law Firm, which submitted a request for a private letter ruling seeking relief under § 301.9100-3.

### LAW AND ANALYSIS

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 Income Tax 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 a timely election under § 855(a) of the Code on its federal income tax return filed on Date 5 for the Tax Year ended Date 6.

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 director will determine Fund's tax liabilities for the year involved. If the director 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 election under § 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 returns 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.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to one of your authorized representatives.

Sincerely yours,

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ALICE M. BENNETT  
Chief, Branch 3  
Office of Associate  
Chief Counsel  
(Financial Institutions & Products)

Enclosures:

Copy of this letter  
Copy for section 6110 purposes

cc: