

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Date:

December 03, 2004

**LEGEND**

Fund A =

Fund B =

Trust =

State =

Administrator =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =

Date 10 =

Date 11 =

Date 12 =

Dear :

This is in reply to your letter dated June 24, 2004, and subsequent correspondence, submitted on behalf of both Fund A and Fund B (Funds) by their authorized representative. Each Fund requests a ruling granting it an extension of time under section 301.9100-3 of the Procedure and Administration Regulations to make an election under section 855(a) of the Internal Revenue Code to treat dividends distributed after the close of the taxable year ended Date 1 as having been made during that taxable year.

### **FACTS**

Each Fund is a series of Trust, a State business trust registered under the Investment Company Act of 1940, 15 U.S.C. section 80a-1, et seq., as amended. The Funds operate as open-end management investment companies. Each of the Funds has timely elected to be treated as a regulated investment company (RIC) pursuant to Subchapter M on the Code.

Each Fund represents that it has qualified to be treated as a RIC in accordance with sections 851-855 for all taxable years since its inception. Each Fund has timely satisfied the notice requirement under section 852(b)(3)(D)(i) and has timely met all requirements regarding its Form 1099 filings for all years since its inception. Each Fund has declared and paid all required Fund distributions to shareholders in accordance with the requirements set forth in section 851, et seq., for all years since its inception. Each Fund uses an accrual basis of accounting for maintaining its books and for filing its federal income tax returns.

On or about Date 2, each Fund filed a Form 1128, Application To Adopt, Change, or Retain a Tax Year, requesting to change its tax year end to the year end it used for financial accounting purposes. Prior to this time, the tax year for each Fund ended on Date 3 and its financial accounting year ended on Date 4. The requests of the Funds were accepted by the Service on or about Date 5, and the tax year end change was effective for the Funds' respective years ending Date 6, thus creating a shortened reporting period beginning Date 7 and ending Date 6. Accordingly, each Fund was required to file a tax return for its fiscal year ending Date 1 and for its short period ending Date 6.

Pursuant to pre-established tax compliance procedures of the administrator of the Funds (Administrator), it has always been the customary and standard operating procedure for each Fund to file a Form 7004 requesting an automatic extension of 6-month to file its federal income tax return. Except as described below, all tax returns and extensions have been timely filed for each Fund. On Date 9, each Fund timely filed a request for an automatic extension until Date 8, to file its tax return for fiscal year ended Date 1. On Date 11, each Fund timely filed a request for an automatic extension until Date 10, to file its tax return for the short period ended Date 6.

The Administrator prepares the tax returns for hundreds of mutual funds each year. In accordance with pre-established procedures, the Administrator is responsible to prepare, review for completeness and accuracy, and timely file the Forms 7004 and 1120-RIC for the Funds. A tax calendar is maintained by the Administrator's tax compliance team to monitor tax filing requirements for each Fund. Tax filing requirements for each Fund are listed on the calendar and, upon filing the required forms and obtaining a certified mail receipt, a notation of the mailing date is made on the calendar. Approximately two weeks prior to the 15<sup>th</sup> of each month, a tax compliance team member reviews the calendar for the upcoming month's filing requirements to insure that all compliance requirements are satisfied. Pursuant to the pre-established procedures a second member of the tax compliance team is to repeat the process of reviewing the tax calendar for upcoming filing requirements. Open items on the calendar are communicated to the tax compliance team member responsible for the entities filings to ensure that returns are timely filed. The pre-established procedures additionally require that a tax compliance member continually monitor the progress of the returns until all filing requirements for the month are satisfied by the required due date.

Changes were made in the tax calendar to reflect the filing deadlines for the Funds' new Date 4 tax year end. However, the Administrator failed to include an entry reflecting the extended due date for the Funds' tax year ending Date 1. As a result, each Fund failed to timely file its federal income tax return for the period ending Date 1.

On Date 12, while preparing the Date 6 tax year end Forms 1120-RIC, it was discovered that the tax returns for the period ending Date 1 had not been filed. The Administrator immediately prepared the Forms 1120-RIC and filed them the following day. The Administrator also immediately changed the procedures of the tax compliance tracking system to insure that this inadvertent omission would be avoided in the future.

The Administrator has provided the Service with a detailed affidavit, consistent with the above facts. In addition, the affidavit describes how the Administrator failed to properly modify the Funds' tax compliance calendar. It further describes, and provides a detailed chronology of how the Administrator discovered the omission and the actions it took in response to the discovery.

## **LAW AND ANALYSIS**

Section 855(a) provides, in part, that if a RIC declares a dividend prior to the time prescribed by law for the filing of its return for a tax year (including the period of any extension of time granted for filing such return), and distributes the amount of the dividend to shareholders in the 12-month period following the close of such tax year and not later than the date of the first regular dividend payment made after the declaration, the amount so declared and distributed shall, to the extent the RIC 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 otherwise by section 855.

Section 1.855-1(b)(1) of the Income Tax Regulations provides that a section 855(a) election must be made in the return filed by the RIC for the taxable year. The election shall be made by the taxpayer by treating the dividend (or portion thereof) to which such election applies as a dividend paid during the taxable year in computing its investment company taxable income, or if the dividend (or portion thereof) to which such election applies is to be designated by the company as a capital gain dividend, in computing the amount of capital gain dividends paid during such taxable year.

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 section 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 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**

Based on the facts and representations submitted, we are satisfied that each Fund has acted reasonably and in good faith, and that the granting of relief will not prejudice the interests of the Government. Accordingly, each Fund is granted an extension of 30 days from the date of this letter to make an election under section 855(a) on their federal income tax returns for the year ending Date 1.

This ruling is limited to providing an extension of time for making an election under section 855(a). It does not provide relief from any liability incurred as a result of filing a late return. Except as specifically ruled upon herein, we express no opinion concerning any federal excise or income tax consequences relating to the facts herein

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under any other section of the Code. For example, we express no opinion as to whether either Fund, in fact, has satisfied all of the requirements of section 855 and the regulations thereunder. We also express no opinion as to whether either Fund qualifies as a RIC under subchapter M, part I, of Chapter 1 of the Code.

Further, no opinion is expressed as to whether either Fund's tax liability is not lower in the aggregate for the year to which the regulatory election applies than the 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's office will determine each Fund's tax liability for the year involved. If the director's office determines a Fund's liability is lower, that office will determine the federal income tax effect.

This ruling is directed only to the taxpayers who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

Elizabeth A. Handler  
Elizabeth A. Handler  
Chief, Branch 1  
Office of Associate Chief Counsel  
(Financial Institutions & Products)