

**Internal Revenue Service**

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:  
202/622-4122  
Refer Reply To:  
CC:FIP:1/PLR-113507-01  
Date:

June 6, 2001

**LEGEND**

- Fund A =
- Fund B =
- Fund C =
- Fund D =
- Fund E =
- Fund F =
- Fund G =
- Fund H =
- Fund I =
- Fund J =
- Fund K =
- Fund L =
- Fund M =
- Fund N =
- Trust A =
- State A =
- Accountant =
- Manager =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =

Dear :

This is in reply to a letter dated February 28, 2001, and subsequent correspondence, requesting a ruling on behalf of Fund A, Fund B, Fund C, Fund D, Fund E, Fund F, Fund G, Fund H, Fund I, Fund J, Fund K, Fund L, Fund M, and Fund N (individually, a Fund). You have requested a ruling that each Fund, except for Fund N, be granted an extension of time under § 301.9100 of the Procedure and Administration Regulations to make an election under § 855(a) of the Internal Revenue Code for Fund's tax year ended Date 1. Additionally, you have requested a ruling that Fund N be granted an extension of time under § 301.9100 to make an election under § 853(a) for Fund N's tax year ended Date 1.

### **FACTS**

Trust A is registered as an open-end diversified management investment company under the Investment Company Act of 1940, 15 U.S.C. § 80a-1, et seq., as amended (the "1940 Act"), and is organized as a State A Business Trust. Trust A commenced operations on Date 2. Each Fund is a series of Trust A and is registered under the 1940 Act as an open-end diversified management investment company. In the federal income tax return filed for its first year, each Fund elected to be treated as a regulated investment company (RIC) under subchapter M, part I, of Chapter 1 of the Code and has maintained its election and qualification as a RIC in each tax year thereafter. Each Fund maintains its books and records in accordance with an accrual method of accounting. Each Fund files its federal income tax return on the basis of a fiscal year beginning on Date 3 and ending on Date 4.

An independent accountant, Accountant, was retained as a paid preparer to prepare and sign the federal income tax return of each Fund. However, Manager was

responsible for preparing and mailing a Form 7004, Application for Automatic Extension of Time to File a Corporation Income Tax Return, for each Fund. Since each Fund's inception, its annual federal income tax return due date has been extended and its return has been filed in a timely fashion. In addition, each return has included an election pursuant to § 855(a) and § 1.855-1(b)(1) of the Income Tax Regulations if such a dividend was required to pay all of the Fund's investment company taxable income and net capital gain for the tax year. With respect to Fund N, each return has also included an election pursuant to § 853(a) and § 1.853-4(a)(2) regarding the pass through of foreign tax credits to Fund N's shareholders.

For its taxable year ending Date 1, each Fund, except for Fund N, intended to make an election under § 855(a). The due date, without extensions, for filing each Fund's return in which the election had to be made was Date 5. Prior to Date 5, the Board of Directors for each Fund, except for Fund N, declared dividends pursuant to § 855 for net investment income and capital gains for the taxable year ended Date 1. The dividends were paid by each Fund within the 12-month period following Date 1. Fund N intended to make an election under § 853(a) for its taxable year ended Date 1. The due date, without extensions, for Fund N's return in which the election had to be made was Date 5. Each Fund filed its federal income tax return for year ended Date 1 on Date 6 and made thereon the election for which it is requesting an extension of time to make.

The typical procedure for filing the extensions has been for Manager to assign the responsibility to an individual staff member. For the taxable year ended Date 1, it was the responsibility of Manager's Financial Reporting Unit Manager ("Unit Manager") to monitor the dates and to ensure that each Fund's Form 7004 was timely filed. Each Fund was under the belief that its Form 7004 was timely filed by the Manager because filing extensions was part of the regular fiscal year end process of the Manager and in previous years the Manager had filed the extensions by the appropriate due date. In preparation of the Date 1 tax returns, Accountant's senior tax manager responsible for the preparation of each Fund's tax return called the Unit Manager on Date 7 requesting a copy of each Fund's Form 7004. The Unit Manager was under the belief that each Fund's Form 7004 was properly filed and indicated that the copies would be forwarded. On Date 7 the Unit Manager reviewed the appropriate files but failed to locate copies of the extensions. On Date 8 Manager contacted the Internal Revenue Service ("Service") and the Service indicated that it did not have any record of having received extensions for the Date 1 tax returns. To date, no Fund has been able to produce any proof or copy establishing that its Form 7004 had been filed.

At or near Date 5, the Funds and Trust A initiated organizational changes, some of which impacted the Unit Manager. The organizational changes included the addition of five new funds to Trust A, the reorganization of internal managers, and a decrease in administrative staff that assists in the processing of each Fund's tax return extension request. These changes disrupted normal operations and caused the Unit Manager to inadvertently neglect to prepare and file the extension requests by Date 5.

On or about Date 9, Accountant recommended to Manager that each Fund seek an extension of time under § 301.9100-1 and § 301.9100-3 to make its respective election under § 853(a) or § 855(a).

### **LAW AND ANALYSIS**

Section 853(a) provides that if more than 50 percent of the value (as defined in § 851(c)(4)) of a RIC's assets at the close of the taxable year consists of stock or securities in foreign corporations, and the RIC meets the requirements of § 852(a) for the taxable year, the RIC may elect to have its shareholders treated as if they had paid their proportionate share of certain foreign taxes paid by the RIC.

Section 853(c) provides that the amount to be treated by the shareholder, for purposes of section 853(b)(2), as his proportionate share of taxes paid to any foreign country or possession of the United States, and gross income derived from sources within any foreign country or possession of the United States, shall not exceed the amounts so designated by the RIC in a written notice mailed to its shareholders not later than 60 days after the close of its taxable year.

Section 1.853-4 provides the manner in which a RIC makes an election under § 853. An election under § 853 must be made not later than the time prescribed for filing the return (including extensions thereof), and is irrevocable with respect to the dividend (or portion thereof), and the foreign taxes paid with respect thereto, to which the election applies.

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 tax year, except as provided otherwise by § 855.

Section 1.855-1(b)(1) provides that a § 855(a) election must be made in the return filed by the company for the tax year. The election should be made by the taxpayer by treating the dividend (or portion thereof) to which such election applies as a dividend paid during the tax 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 tax year. After the time for filing the return for the tax year for which an election is made under § 855(a), the election is irrevocable.

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 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 facts and representations submitted, we conclude that each Fund has satisfied the requirements for our granting a reasonable extension of time to allow it to make the election under § 853(a) or § 855(a). Accordingly, each Fund, except for Fund N, is granted an extension until Date 6 to make an election under § 855(a) for its tax year ended Date 1. Additionally, Fund N is granted an extension until Date 6 to make an election under § 853(a) for its tax year ended Date 1.

This ruling is limited to providing extensions of time for filing § 855(a) and § 853(a) elections and 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 under any other section of the Code. For example, we express no opinion as to whether each Fund, in fact, has satisfied all of the requirements of § 855 and the regulations thereunder. Similarly, we express no opinion as to whether Fund N, in fact, has satisfied all of the requirements of § 853 and the regulations thereunder. For instance, we express no opinion as to whether Fund N, in fact, mailed to its shareholders the written notice required under § 853(c). We also express no opinion as to whether each Fund qualifies as a RIC under subchapter M, part I, of Chapter 1 of the Code.

Further, 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 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 return 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,  
Acting Associate Chief Counsel  
(Financial Institutions & Products)  
By: Alvin J. Kraft  
Chief, Branch 1

Enclosures:

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