

**Internal Revenue Service**

Department of the Treasury

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Washington, DC 20224

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Refer Reply To:

CC:FIP:2 PLR-123587-03

Date:

July 8, 2003

In re:

Fund A =

Fund B =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Firm =

Dear :

This is in reply to a letter dated April 4, 2003, in which Funds A and B ("Funds") request an extension of time to file an election under section 855(a) of the Internal Revenue Code ("section 855 election").

## FACTS

Funds are corporations registered under the Investment Company Act of 1940, as amended, as open-end management investment companies. Funds have elected to be treated as regulated investment companies ("RICs") in accordance with Subchapter M of the Code. Funds' taxable year is a fiscal year ending on Date 1.

For their taxable year ending Date 2, Funds intended to file a section 855 election. The due date, without extensions, for filing the return in which the election had to be made was Date 3.

Firm had the responsibility for filing Form 7004 requesting an extension of time for filing the returns in which Funds were to make section 855 elections.

Firm failed to enter information on Funds into Firm's automated tracking system, which generates reports of outstanding returns and extensions. If a return or extension does not appear on the report as outstanding, the employee responsible for filing it may conclude that the return or extension was filed. As a result, each Fund's return was not identified by the automated system and the fact that the extensions had inadvertently not been filed by the due date was not discovered until Date 4.

On Date 5 Funds filed late returns making the section 855(a) election.

Funds make the following representations:

1. The request for relief was filed by Funds before the failure to make the regulatory election was discovered by the Service.
2. Granting the relief will not result in Funds having a lower tax liability in the aggregate for all years to which the regulatory election applies than Funds would have had if the election had been timely made (taking into account the time value of money).
3. Funds do not seek to alter a return position for which an accuracy-related penalty has been or could have been imposed under section 6662 of the Code at the time Funds requested relief and the new position requires or permits a regulatory election for which relief is requested.
4. Being fully informed of the required regulatory election and related tax consequences, Funds did not choose to not file the election.

## APPLICABLE LAW

Section 301.9100-1(c) of the regulations 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 deadline 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.

Section 301.9100-3(a) through (c)(1)(i) of the regulations sets 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 upon the facts and representations submitted, it is held that Funds have shown good cause for granting a reasonable extension of time to allow them to make section 855 elections. Accordingly, the time for filing the elections is extended to Date 5.

No opinion is expressed as to whether the Funds' tax liability is not lower in the aggregate for all years to which the regulatory election applies than the 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 the taxpayers' tax liability for the years involved. If the director's office determines the taxpayers' liability is lower, that office will determine the federal income tax effect.

This ruling is limited to the timeliness of Funds' elections. This ruling does not relieve Funds from any penalties they may owe as a result of the failure to file federal income tax returns on time. This ruling's application is limited to the facts, Code sections, and regulations cited herein. No opinion is expressed as to whether Funds qualify as RICs under subchapter M, part I, of the Code.

A copy of this letter is being forwarded to the service center where Funds file returns with instructions that although their returns were not timely filed, Funds are to be treated as having made timely section 855 elections.

Except as specifically provided otherwise, no opinion is expressed on the federal

income tax consequences of the transaction described above.

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

In accordance with the terms of a power of attorney on file in this office, the original of this letter is being sent to you and copies are being sent to the taxpayers.

Sincerely yours,

/s/William E. Coppersmith  
William E. Coppersmith  
Chief, Branch 2  
Office of Associate Chief Counsel  
(Financial Institutions & Products)

cc: