

## Internal Revenue Service

## Department of the Treasury

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Person to Contact:

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Refer Reply To:

CC:FIP:2-PLR-125314-01

Date:

July 25, 2001

### Legend

Fund =

Year =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Firm =

This is in reply to a letter dated May 3, 2001, requesting an extension of time, under section 1.9100-3 of the Income Tax Regulations, for Fund to make the election under section 855(a) of the Internal Revenue Code and section 1.855-1(b)(1).

### FACTS

Fund is a corporation registered under the Investment Company Act of 1940, as amended, as an open-end management investment company. Fund has elected to be treated as a regulated investment company ("RIC") in accordance with Subchapter M of the Code. Fund's taxable year is a fiscal year ending on Date 1.

For Year, Fund declared dividends on Date 2 and paid them on Date 3, prior to Date 4, the due date without extensions for its federal income tax return for Year. Fund intended to elect under section 855(a) of the Code and section 1.855-1(b)(1) of the

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regulations with respect to the dividends paid.

Firm, an organization of tax professionals, audited Fund for Year, and was engaged to prepare tax returns and file extensions, as in prior years. Firm uses an automated system for tracking extension requests and due dates of clients' tax returns. When a return or extension is mailed, a copy of the transmittal letter is routed to the system administrator, who records that the return or extension has been filed. The system generates reports of outstanding returns or extensions if the administrator does not receive a copy of the transmittal letter. The reports are distributed to the tax manager responsible for the account. If a return or extension does not appear on the report as outstanding, the manager may conclude that the return or extension was filed.

The tax manager was responsible for recording information concerning the due date for filing Fund's return and preparing and filing extensions. The information for Fund was inadvertently deleted in the course of making changes to Firm's tracking system. Consequently, the manager's report did not show that a return or extension had not been filed for Fund. At a meeting of Firm managers on Date 5, the manager responsible for Fund's filings stated that she had filed an extension for Fund, based on her review of the report from the tracking system, which did not show that an extension had not been filed for Fund.

On Date 6, after the due date without extensions for Fund's income tax return, Firm personnel began preparing Fund's return, and discovered that there was no record that an extension had been filed. Firm investigated immediately, confirmed the discovery, discussed the matter with Fund, and prepared a request under section 1.9100 of the regulations. On Date 7 Fund filed a return making the election under section 855(a) of the Code.

Fund makes the following representations:

1. The request for relief was filed by the Fund before the failure to make the regulatory election was discovered by the Service.
2. Granting the relief will not result in the Fund having a lower tax liability in the aggregate for all years to which the regulatory election applies than the Fund would have had if the election had been timely made (taking into account the time value of money).
3. The Fund does 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 the Fund 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, the Fund 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).

### ANALYSIS and CONCLUSION

Based upon the facts and representations submitted, it is held that Fund has shown good cause for granting a reasonable extension of time to allow it to make a section 855 election. Accordingly, the time for filing the election is extended to Date 7.

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

This ruling is limited to the timeliness of Fund's election. This ruling does not relieve Fund from any penalties it may owe as a result of the failure to file a federal income tax return on time. This ruling's application is limited to the facts, Code sections, and regulations cited herein. No opinion is expressed as to whether Fund qualifies as a RIC under subchapter M, part I, of the Code.

A copy of this letter is being forwarded to the service center where Fund files its returns with instructions that although its return was not timely filed, Fund is to be treated as having made a timely section 855 election.

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Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer(s) requesting 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, copies of this letter are being sent to your authorized representatives.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely yours,  
Acting Associate Chief Counsel  
(Financial Institutions & Products)  
By: William E. Coppersmith  
Chief, Branch 2