

## Internal Revenue Service

## Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

**CC:FIP:2-PLR-125908-00**

Date:

**March 23, 2001**

In re:

Fund =

Month =

Year =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Firm =

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This is in reply to a letter dated November 9, 2000, and subsequent correspondence. Fund requests an extension of time to file an election under section 855(a) of the Internal Revenue Code ("section 855 election").

## 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 its taxable year ending Date 2, Fund 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. Prior to Date 3, Fund had declared on Date 4 the dividends to which the election was to relate.

Firm is composed of income tax professionals and provides tax services to Fund. Firm had the responsibility for requesting an extension of time for filing the return in which Fund was to make a section 855 election.

Due to a serious health emergency, the manager in Firm who was responsible for filing Fund's extension to file its return for its taxable year ending Date 1 did not file the extension.

On Date 5 Fund filed its return for its taxable year ending Date 1. The return included a section 855 election and disclosed that Fund would seek an extension of time under section 301.9100-3 of the Procedure and Administration Regulations.

Fund makes the following representations:

1. The request for relief was filed by the taxpayer before the failure to make the regulatory election was discovered by the Service.
2. Granting the relief will not 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).
3. The taxpayer 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 taxpayer 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 taxpayer did not choose to not file the election.

## APPLICABLE LAW

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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 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 5.

No opinion is expressed as to whether the taxpayer'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 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 taxpayer 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 a copy is being sent to the taxpayer.

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