

## Internal Revenue Service

## Department of the Treasury

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CC:FIP:2 PLR-164335-02

Date:

March 26, 2003

Fund A =

Fund B =

Fund C =

Fund D =

Fund E =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Firm =

Dear \_\_\_\_\_ :

This is in reply to a letter dated November 15, 2002, requesting on behalf of Funds A through E ("Funds") extensions of time to file elections under section 855(a) of the Internal Revenue Code ("section 855 elections").

### 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. The taxable year of all the Funds is the calendar year.

Firm prepares Funds' federal income tax returns. For the taxable year ending Date 1, Firm intended to file Forms 7004 on Funds' behalf for extensions for filing the returns in which elections had to be made under section 855(a) of the Internal Revenue Code. The Forms 7004 should have been mailed by Date 2. On Date 3, three days after Date 2, Firm discovered that by oversight the Forms 7004 had not been mailed, and promptly mailed them.

On Date 4, Funds filed their income tax returns for the year ending on Date 1. Because the returns were filed late, the filing date is the date on which they were received at the appropriate service center, rather than the date on which they were mailed. The returns were not mailed by registered mail, return receipt requested, so Funds are not certain precisely when the returns were received by the service center.

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 elections 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 make a section 855 election. Accordingly, the time for filing the election is extended to the date on which the returns mailed on Date 4 were received in the service center.

No opinion is expressed as to whether 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 elections 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 failures 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 their returns with instructions that although 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, a copy of this letter is being sent to your authorized representative.

Sincerely yours,

William E. Coppersmith

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