

**Internal Revenue Service**

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:  
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Date:  
November 20, 2001

TY:  
Fund 1 =  
Fund 2 =  
Fund 3 =  
Fund 4 =  
Fund 5 =  
Advisor =  
Firm =  
Year =  
Date 1 =  
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Date 5 =

This is in reply to a letter dated July 25, 2001, requesting an extension of time, under section 1.9100-3 of the Income Tax Regulations, for Funds 1 through 5 ("Funds")

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to make the election under section 855(a) of the Internal Revenue Code and section 1.855-1(b)(1).

### 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 the calendar year.

For Year, Funds declared dividends on Date 2, which was prior to Date 1, the due date without extensions for their federal income tax returns for Year. Funds intended to elect under section 855(a) of the Code and section 1.855-1(b)(1) of the regulations with respect to the dividends paid.

The person in Firm who had historically been responsible for Funds' federal income tax filings returned from leave on Date 3, shortly before Date 1. A new senior tax analyst whose promotion within Firm became effective Date 1 had assumed some responsibilities relating to Funds, but there was some confusions as to which person in Firm was supposed to file Forms 7004 for Funds. Consequently, those forms were not filed.

On Date 4 Firm discovered the failure to file Forms 7004 on behalf of Funds and contacted Advisor. Funds' federal income tax returns were filed on Date 5 and made the election under section 855(a) of the Code, and disclosed the Funds' intention to seek relief under section 1.9100 of the regulations.

Funds make the following representations:

1. The request for relief was filed by the Funds before the failure to make the regulatory election was discovered by the Service.
2. Granting the relief will not result in the Funds having a lower tax liability in the aggregate for all years to which the regulatory election applies than the Funds would have had if the election had been timely made (taking into account the time value of money).
3. The 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 the 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, the Funds 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 the Funds have shown good cause for granting reasonable extensions of time to allow them to make elections under § 855(a) of the Code. 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 their 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 their returns with instructions that although their returns were not timely filed, Funds are to be treated as having made timely section 855 elections.

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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 taxpayers requesting 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, copies of this letter are being sent to the first and the second-named representatives on the power of attorney.

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