

**Internal Revenue Service**

Department of the Treasury

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Date:  
February 1, 2000

LEGEND:

Fund A =

Fund B =

X =

Company =

Employee =

Date 1 =

Year 1 =

Year 2 =

Accounting Firm =

\$a =

\$b =

\$c =

\$d =

Dear :

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This is in response to a letter dated November 15, 1999, requesting a ruling on behalf of Fund A and Fund B (collectively, the "Funds"). The Funds request an extension of time under section 301.9100-1 of the Procedure and Administration Regulations to make an election under section 855(a) of the Internal Revenue Code for the Funds' tax year ended August 31, Year 1.

## FACTS

The Funds are part of X's family of funds. Each Fund has elected to be treated as a regulated investment company (RIC) under subchapter M, part I of Chapter 1 of the Code (sections 851-855). Each Fund uses an annual accounting period ending August 31 and the overall accrual method of accounting for maintaining accounting books and filing federal income tax returns.

Company assumed responsibility for tax return filings for the Funds. Within the Company, Employee bore the sole responsibility of filing the tax returns. Employee left Company in Date 1. After Employee's departure, other Company employees reviewed the Company records maintained by Employee and discovered that certain tax returns for the Funds had not been filed.

In Year 1, Fund A wanted to change its tax year end from August 31 to March 31. Fund A attempted to change its tax year end to March 31 under the automatic change procedures of Rev. Proc. 92-13, 1992-1 C.B. 665. Fund A was ineligible to use this procedure, however, because it had changed its year end within the six years prior to the requested year of change.

Employee apparently realized that the year end change election was invalid and filed a request to extend the due date for the August 31, Year 1, tax return to May 15, Year 2. However, Employee failed to file a return for the tax year ended August 31, Year 1, prior to his departure. Company management was unaware of the invalidity of the year end change election and the resulting fact that a return for the tax year ended August 31, Year 1, was due on May 15, Year 2.

In Year 1, Fund B wanted to change its tax year end from August 31 to June 30. Fund B attempted to change its tax year end to June 30 under the automatic change procedures of Rev. Proc. 92-13. Fund B was ineligible to use this procedure because the return for the short period ended June 30, Year 1, was not timely filed by March 15, Year 2.

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Employee filed a request to extend the due date for the August 31, Year 1, tax return to May 15, Year 2. However, Employee failed to file a return for the tax year ended August 31, Year 1, prior to his departure. Company management was unaware of the invalidity of the year end change election and the resulting fact that a return for the tax year ended August 31, Year 1, was due on May 15, Year 2.

With the possible exception of Employee, Company management believed that valid elections for year end changes had been made for the Funds and that the corresponding tax returns had been timely filed. In early May of Year 2, following Employee's departure, Company employees discovered that the elections for year end changes were invalid and that tax returns for the year ended August 31, Year 1, needed to be prepared. Company management engaged Accounting Firm to prepare tax returns for the Funds. Tax returns for the Funds were prepared for the year ended August 31, Year 1, and were filed on July 9, Year 2.

Fund A's return for Year 1 included an election for a section 855(a) spillback dividend of \$a. Fund A declared and paid \$b on March 19, Year 2, to which the section 855 election was intended to apply. That dividend was declared and paid within the extended due date for the return for the year ended August 31, Year 1.

Fund B's return for Year 1 included an election for a section 855(a) spillback dividend of \$c. Fund B declares dividends daily and distributes dividends monthly. Fund B credits dividends reinvested in Fund B as of the close of business on the last business day of the month and sends out checks to shareholders that have not elected to reinvest dividends on the next business day. In Year 1, Fund B distributed monthly ordinary dividends on September 1 and 30, October 1 and 30, November 2 and 30, and December 1 and 31. The distributions totaled \$d. Fund B intended that its section 855 election cover all of the ordinary dividends paid in September, October and November, and a portion of the ordinary dividend paid at the end of December. These dividends were declared and paid within the extended due date for the return for the year ended August 31, Year 1.

## LAW

Section 855(a) provides, in part, that if a RIC declares a dividend prior to the time prescribed by law for the filing of its return of a taxable year (including the period of any extension of time granted for filing such return), and distributes the amount of such dividend to shareholders in the 12-month period following the close of such taxable year and not later than the date of the first regular dividend payment made after such declaration, the amount so declared and distributed shall, to the extent the company elects in such return in accordance with regulations prescribed by the Secretary, be considered as having been paid during such taxable year, except as provided elsewhere in the section.

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Section 1.855-1(b) of the Income Tax Regulations provides that the section 855 election must be made in the return filed by the company for the taxable year. The election should be made by the taxpayer by treating the dividend (or portion thereof) to which such election applies as a dividend paid during the taxable year in computing its investment company taxable income, or if the dividend (or portion thereof) to which such election applies is to be designated by the company as a capital gain dividend, in computing the amount of capital gain dividends paid during such taxable year. After the expiration of the time for filing the return for the taxable year for which an election is made under section 855(a), the election is irrevocable.

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 due date 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 on the information provided and the representations made, we hold that each Fund has demonstrated good cause for the granting of a reasonable extension of time under section 301.9100-1 and -3. Therefore, the Funds will be treated as having made a timely election under section 855(a) on their federal income tax return filed for the tax year that ended on August 31, Year 1.

Except as specifically ruled upon herein, no opinion is expressed or implied as to any federal income tax consequences regarding the Funds. In particular, no opinion is expressed or implied whether the Funds have satisfied the requirements of section 855 and the regulations thereunder or whether the Funds qualify as a RIC under subchapter M, part 1, of the Code.

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Further, 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 the taxpayer's 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 district director's office will determine the taxpayer's tax liability for the years involved. If the district director's office determines the taxpayer's liability is lower, that office will determine the federal income tax effect.

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.

Sincerely yours,

Lon B. Smith  
Assistant Chief Counsel  
(Financial Institutions  
and Products)

Enclosure: Copy of this letter  
Section 6110 copy