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September 29, 2008

Mr. Douglas Shulman
Commissioner of Internal Revenue
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, D.C. 20044

Re: Extension of Time for Filing Returns; REG-115457-08; 73 Federal Register 37389
(July 1, 2008).

Dear Mr. Shulman:

The American Bankers Association¹ (ABA) appreciates the opportunity to provide comments on the Internal Revenue Service's (IRS) proposed amendments to the automatic filing extension for pass-through entities. In their fiduciary capacity, many ABA banks and thrifts provide administrative and tax preparation services to trusts and estates.² As a result, ABA and its members are very concerned about the proposal and its effect on the efficient and timely processing of their clients' tax filings.

Under the proposal, the IRS would shorten the period for filing tax returns for certain pass-through entities from six to five months. The purpose of this shortened extension is to alleviate burden on individual taxpayers who may rely on the information provided by these entities to complete their own tax returns. At this time, both individual taxpayers and pass-through entities may receive an automatic six month extension from April 15 to October 15 to file tax returns. With a shortened extension, pass-through entities would have to complete their returns by September 15.

TRUSTS RELY ON PARTNERSHIP INFORMATION

ABA understands the purpose of a shortened extension for pass-through entities and how it would benefit individual taxpayers. Individuals, however, are not the only persons who participate in partnerships. Trusts very commonly hold partnership interests, such as hedge funds and private equity, as part of their portfolio of investments. Therefore, trusts, like individuals, must also await the information on the partnership Schedule K-1 to complete their own tax return, as well as to complete and deliver their own Schedule K-1s to the trust beneficiaries.

¹ The American Bankers Association brings together banks of all sizes and charters into one association. ABA works to enhance the competitiveness of the nation's banking industry and strengthen America's economy and communities. Its members – the majority of which are banks with less than \$125 million in assets – represent over 95 percent of the industry's \$12.7 trillion in assets and employ over 2 million men and women.

² As of the end of 2007, approximately 1800 banks held more than \$19 trillion in fiduciary assets for both retail and institutional customers in 19 million accounts. FDIC Call Report Data, December 2007. As used in this letter, the term "banks" includes banks, savings associations, and trust companies that act in a fiduciary and related capacity.

Once the trustee receives the partnership Schedule K-1s, the trustee must assimilate the information and determine the taxable income allocable to either the trust or the beneficiaries. These complex decisions affect whether the trust incurs tax liability. In this respect, trusts, unlike partnerships, are not pure pass-through entities that never incur tax liability and should not be treated in the same manner as partnerships with respect to filing extensions.

According to ABA members, most trusts for which they are responsible file their tax returns and complete their Schedule K-1s by April 15. Nonetheless, there are some trusts that must request a filing extension for reasons beyond the control of the trustee. In these cases, the majority of trusts that do request an automatic extension do so because the trustee is awaiting a Schedule K-1 from a partnership.³ Very often the trustee does not receive this information until September, after the partnership has completed its annual audit.

Under the current extension period, the trustee still has adequate time to determine the allocation of taxable income between the trust and beneficiaries and to meet the filing extension deadline. However, if trusts were only given a five month extension, the trustee would very likely receive the partnership information on the last possible day of the extension. The trustee would then have to make those complicated tax allocations mentioned above and complete its filing responsibilities within a single day. Fulfilling these duties as a trustee would be extremely difficult from both a fiduciary and administrative perspective and hardly in the best interests of the trust and its beneficiaries. In fact, under this time constraint, trustees may be forced to file incomplete or incorrect filings to meet the September 15 deadline and subsequently have to amend the filings. Such a scenario defeats the purpose of the shortened filing extension period – to provide individual taxpayers with accurate and timely information.

BURDEN TO THE IRS

In addition to imposing a significant burden on trustees, a shortened extension period for trusts would impede the efficient collection of taxes. Trustees receiving numerous Schedule K-1s on the same day would likely have to file amended returns to account for the late information. In turn, the IRS would be responsible for processing the amended returns of both the trusts and the individual beneficiaries. By continuing to grant trusts a six month extension, the IRS can avoid this needless complication and promote the interests of all affected parties.

MINIMUM AUTOMATIC EXTENSION PERIOD

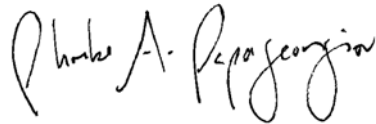
At a minimum, trusts require a five and a half month automatic filing extension until September 30. Such a period would give trustees time to receive the necessary information from partnerships and would facilitate the accurate and timely filings sent to individual taxpayers.

³ For example, at one institution out of the fifty thousand trust accounts only 1500 requested a filing extension. Of those that requested a filing extension, most were awaiting information from partnerships to complete their tax returns and Schedule K-1s.

CONCLUSION

In conclusion, ABA appreciates this opportunity to offer comments on the proposed shortened period for automatic filing extensions. In the interests of trusts, beneficiaries, and efficient tax collection, we strongly urge the IRS to continue granting trusts a six month automatic filing extension. Should you have any questions or comments with respect to the issues raised in this letter, please do not hesitate to call the undersigned at (202) 663-5053.

Sincerely,

A handwritten signature in black ink that reads "Phoebe A. Papageorgiou". The signature is written in a cursive style with a large, looping initial "P".

Phoebe A. Papageorgiou
Senior Counsel
Center for Securities, Trust and Investments
American Bankers Association