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This ruling responds to a letter dated October 13, 2009, submitted on behalf of the Portfolio. The Portfolio requests consent to revoke, for tax Year A and subsequent calendar years, a previous election made by the Portfolio under section 4982(e)(4)(A) of the Internal Revenue Code. Additionally, the Portfolio requests that the calculation of its required distributions under sections 4982(b)(1) and 4982(e) for the calendar year ending December 31, Year A, be determined on the basis of capital gains and losses and foreign currency gains and losses, if any, realized and recognized during the ten-month period from January 1, Year A, through October 31, Year A.

FACTS

Portfolio is organized as a business trust under the laws of State X. It is registered with the Securities and Exchange Commission as an open-end, management investment company under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq. The Portfolio has elected to be treated as a regulated investment company (a “RIC”) for federal income tax purposes under part I of subchapter M of the Code.

The Portfolio uses an accrual method of accounting for tax and financial accounting purposes, and its taxable year ends on December 31. For calendar years through Year B, pursuant to section 4982(e)(4)(A), the Portfolio elected to use its tax year ending on December 31 in lieu of the 1-year period ending on October 31, for purposes of calculating the required distribution under sections 4982(b)(1)(B), 4982(e)(2), and 4982(e)(5).

At the time the Portfolio originally made its election, it believed that the election under section 4982 would relieve the administrative burdens associated with dual calculations of capital gains and losses and section 988 gains and losses under the excise tax and Subchapter M provisions of the Code. However, the Portfolio’s experience has been that the section 4982(e)(4)(A) election has created additional administrative complexities primarily due to time constraints in declaring required excise tax distributions. Furthermore, the promulgation of regulations coordinating the excise tax and subchapter M provision has greatly reduced the administrative burden of having a tax year different from the period used for determining its required distributions under section 4982.

Accordingly, the Portfolio seeks consent to revoke its election to use the taxable year for purposes of sections 4982(b) and 4982(e). The Portfolio makes the following representations:

1. The desire to revoke its section 4982(e)(4)(A) election is due to administrative and non-tax related financial burdens caused by the election.
2. It is not seeking to revoke its election for the purpose of preserving or securing a tax benefit.
3. It will neither benefit through hindsight nor prejudice the interests of the government as a result of being permitted to revoke its election.

4. It will not make any subsequent election under section 4982(e)(4)(A) for five (5) calendar years following the year of the grant of revocation.

LAW AND ANALYSIS

Section 4982(a), which was enacted as part of the Tax Reform Act of 1986 and is effective for tax years beginning after December 31, 1986, imposes an excise tax on every RIC for each calendar year equal to 4 percent of the excess, if any, of the “required distribution” over the “distributed amount” for the calendar year.

Section 4982(b)(1) defines the term “required distribution” to mean, with respect to any calendar year, the sum of 98 percent of the RIC’s ordinary income for such calendar year, plus 98 percent of its capital gain net income for the 1-year period ending on October 31 of such calendar year.

Section 4982(e)(4)(A) provides that if the tax year of a RIC ends with the month of November or December, the RIC may elect to have its capital gain net income for its tax year applied in lieu of the 1-year period ending on October 31 of the calendar year for purposes of satisfying the required distribution defined in section 4982(b)(1). Section 4982(e)(4)(B) provides that, once made, such election may be revoked only with the consent of the Secretary.

Section 4982(e)(5) provides that any foreign currency gain or loss attributable to a section 988 transaction and which is properly taken into account for the portion of the calendar year after October 31 shall not be taken into account in determining the ordinary income of the RIC for the calendar year but shall be taken into account in determining the RIC’s ordinary income in the following calendar year. However, if a RIC has made an election under section 4982(e)(4), the preceding sentence shall be applied by substituting the last day of the RIC’s taxable year for October 31.

Based upon the information submitted and the representations made, we conclude that the Portfolio’s desire to revoke its election under section 4982(e)(4)(A) of the Code is because of administrative burdens and not because of any federal tax-related financial burden caused by the election. The Portfolio does not seek to revoke its election for the purpose of preserving or securing a federal tax benefit. Additionally, the Portfolio will neither benefit through hindsight nor prejudice the interest of the government as a result of being permitted to revoke its election.

CONCLUSION

Accordingly, based upon the representations made and pursuant to section 4982(e)(4)(B), the Secretary consents to the revocation of the election made by the Portfolio under section 4982(e)(4)(A), effective for calendar Year A and subsequent years. In addition, in calculating the "required distribution" for calendar Year A, for purposes of section 4982(b)(1) and (e), the capital gain net income and foreign currency gains and losses of the Portfolio will be determined on the basis of the capital gains and losses, and foreign currency gains and losses, if any, recognized and realized during the 10-month period from January 1, Year A, through October 31, Year A.

As a condition to the Secretary's consent to the revocation pursuant to section 4982(e)(4)(B), the Portfolio may not make a subsequent election under section 4982(e)(4)(A) for a period of five (5) calendar years following the year to which the grant of revocation applies (i.e. Year C through Year D).

Except as specifically ruled upon above, no opinion is expressed or implied as to any other federal excise or income tax consequences.

This ruling is directed only to the taxpayers requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

It is important that a copy of this letter be attached to the federal income and excise tax return filed by the Portfolio for the year to which this ruling applies.

Sincerely yours,

/S/

Alice M. Bennett
Chief, Branch 3
Office of Associate Chief Counsel
(Financial Institutions and Products)

Enclosures:

Copy of this letter

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