

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

~~Third Party Communication: None~~

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Person To Contact:

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PLR-130309-04

Date:

October 01, 2004

### Legend:

Fund =

Year A =

Year B =

Year F =

State X =

Dear :

This ruling responds to a letter dated May 27, 2004 submitted on behalf of the Fund by its authorized representatives. The Fund requests consent to revoke, for tax Year A and subsequent calendar years, a previous election made by that Fund under section 4982(e)(4)(A) of the Internal Revenue Code. Additionally, the Fund requests that the calculation of its required distribution of capital gain net income under section 4982(b)(1) and (e)(2) and foreign currency gains and losses under section 4982(e)(5) 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 realized and recognized during the ten-month period from January 1, Year A, through October 31, Year A.

The Fund is a State X corporation that is registered with the Securities and Exchange Commission under the investment Company Act of 1940, as amended, 15 U.S.C. Section 80a-1 et seq. The Fund has elected and intends to continue to qualify for treatment as a regulated investment company ("RIC") under subchapter M of the Code.

The Fund uses an accrual method of accounting for tax and financial accounting purposes and uses a calendar year for tax purposes. Pursuant to section 4982(e)(4)(A), the Fund 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) and 4982(e)(2).

At the time the Fund originally made its election, it believed that the election under section 4982 would relieve the administrative burdens associated with dual calculations of capital gains and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 foreign currency gains and losses, under the excise tax and Subchapter M provisions of the Code. However, the Fund's experience has been that the section 4982(e)(4)(A) election has caused the Fund to experience significant administrative difficulties in accurately determining the amount of dividends that should be declared and the related distributions.

Moreover, the promulgation of regulations coordinating the excise tax and Subchapter M provisions has greatly reduced the administrative burden of having a tax year different from the period used for determining the required distributions under section 4982. Accordingly, the Fund seeks consent to revoke its election to use the taxable year (the calendar year) for purposes of sections 4982(b)(1)(B) and 4982(e)(2).

Permitting the Fund to revoke its section 4982(e)(4)(A) election and compute capital gain net income and foreign currency gains and losses for the tax year on October 31, rather than December 31, would significantly lessen the administrative burden of computing capital gain net income and foreign currency gains and losses in an accurate and timely manner. Additionally, the Fund represents that:

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 elections.
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 Fund desires to revoke its election under section 4982(e)(4)(A) of the Code in order to avoid administrative burdens other than federal tax-related financial burden caused by the election. The Fund does not seek to revoke its election for the purpose of preserving or securing a federal tax benefit. Additionally, the Fund will neither benefit through hindsight nor prejudice the interest of the government as a result of being permitted to revoke their elections.

### 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 Fund 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 Fund 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 Fund 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 B through Year F).

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 taxpayer 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 Fund for the year to which this ruling applies.

Sincerely yours,

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

Enclosures:

Copy of this letter  
Copy for § 6110 purposes

cc: