

# Internal Revenue Service

Department of the Treasury  
Washington, DC 20224

Number: **200422052**

Release Date: 5/28/04

Index Number: 0561.05-00, 0562.03-02,  
0851.00-00, 0852.01-00

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CC:FIP:B01 – PLR-147076-03

Date:

February 27, 2004

## Legend

Central Fund =

Trust =

State =

Advisor =

m =

Dear :

This responds to a request for ruling dated August 6, 2003, and subsequent correspondence, you submitted on behalf of Central Fund, as its authorized representative. The ruling requested involves whether the waiver of certain advisory fees will cause dividends paid by Central Fund to fail to qualify for the dividends-paid deduction under §§ 561 and 852 of the Internal Revenue Code.

## FACTS

Trust is organized as a State business trust and is registered as an open-end management investment company under the Investment Company Act of 1940, 15 U.S.C. section 80a-1, et seq., as amended (1940 Act). Trust also is a “series company” under Rule 18f-2 of the 1940 Act with multiple portfolios series outstanding, including Central Fund. Central Fund has been, and will continue to be, operated in a manner intended to qualify it as a regulated investment company (RIC) under § 851 and will distribute all or substantially all of its income to avoid being subject to tax under § 852.

Central Fund is treated as a separate corporation under § 851(g) for purposes of the Code (except with respect to the definitional requirement of § 851(a)).

Certain other funds that are also portfolio series of Trust and certain other funds that are advised or sub-advised by Advisor or advised or sub-advised by any other entity controlling, controlled by or under common control with Advisor (all such advisors or sub-advisors hereinafter referred to as Advisor)(these funds hereinafter referred to as Participating Funds), are permitted to use any cash balances that have not been invested in portfolio securities to purchase shares of Central Fund. Such an investment may not exceed m% of the Participating Fund's total assets.

The service providers for each portfolio series of Trust, including Central Fund, will be the same. Advisor serves as investment advisor to each portfolio series of Trust, including Central Fund, and as investment advisor or a sub-advisor to each of the other Participating Funds (a Participating Fund also may have an investment advisor or a sub-advisor that is unrelated to Advisor). Shares of Participating Funds are distributed by a number of different broker-dealers.

Certain of the Participating Funds may issue groups of shares that represent interests in the same portfolio of securities but have different arrangements for shareholder services or the distribution of shares or both (Multiple Group System). Each of these Multiple Group Systems complies with the requirements of Rev. Proc. 99-40, 1999-2 C.B. 565. Central Fund and some of the Participating Funds have or will adopt a shareholder servicing and distribution plan pursuant to Rule 12b-1 under the 1940 Act (Rule 12b-1 Plan). Each Rule 12b-1 Plan provides or will provide that a Participating Fund with a Multiple Group System may not bear expenses pursuant to the plan in the aggregate in excess of a specified fixed percentage per annum of the average net assets of such fund. For Central Fund and Participating Funds with no Multiple Group System, each Rule 12b-1 Plan provides that a Participating Fund may not bear expenses pursuant to the plan in excess of a specified fixed percentage per annum of the average net assets of such fund.

Central Fund has only one class of shares, and no separate class of shares will be created for shares purchased by a Participating Fund. All distributions of dividends to shareholders of Central Fund will be made pro rata based on net asset value of shares owned, including distributions made to a Participating Fund. Similarly, all distributions of dividends made by a Participating Fund to its shareholders will be made pro rata based on net asset value of shares owned, except for differences permitted under Rev. Proc. 99-40.

The Advisor of each Participating Fund proposes to waive its advisory fees in an amount equal to any distribution and/or service fees that such Participating Fund incurs under the Rule 12b-1 Plan in connection with the fund's investment in Central Fund.

## LAW AND ANALYSIS

Section 851 defines a RIC, in part, as a domestic corporation meeting certain election, gross income, and diversification requirements.

Section 851(g) provides a special rule for a RIC having more than one fund. This provision treats each fund as a separate corporation for all purposes of the Code, other than the definitional requirement of § 851(a).

A corporation that is a RIC within the meaning of § 851 and that is taxable under subchapter M, part I, pays tax on its investment company taxable income under § 852(b)(2) and on the excess, if any, of its net capital gain over its deduction for dividends paid, determined with reference to capital gain dividends only under § 852(b)(3).

Section 852(a) provides that a RIC is not taxable under subchapter M, part I, unless its deduction for dividends paid (as that term is defined in § 561(a) with certain modifications) for the taxable year equals or exceeds a specified portion of its taxable income (with certain adjustments) and its net tax-exempt interest income.

Section 561(a) defines the deduction for dividends paid, for purposes of § 852, to include dividends paid during the taxable year.

Section 561(b) applies the rules of § 562 to determine which dividends are eligible for the deduction for dividends paid under § 561(a).

Section 562(a) states that the term “dividends,” except as otherwise provided, includes only dividends described in § 316 (which provides a definition of dividends for purposes of corporate distributions).

Section 316(a) defines the term “dividend” as any distribution of property made by a corporation to its shareholders (1) out of its earnings and profits (E&P) accumulated after February 28, 1913, or (2) out of its E&P of the taxable year (computed as of its close of the taxable year without diminution by reason of any distributions made during the taxable year), without regard to the amount of the E&P at the time the distribution was made.

Section 562(c) provides that the amount of any distribution shall not be considered as a dividend for purposes of computing the dividends paid deduction under § 561 unless the distribution is pro rata, does not prefer any shares of stock of a class over other shares of stock of that same class, and does not prefer one class of stock over another class except to the extent that one class is entitled (without reference to waivers of their rights by shareholders) to be preferred.

Rev. Proc. 99-40 describes conditions under which distributions made to shareholders of a RIC may vary and nevertheless be deductible as dividends under § 562. Section 4 of Rev. Proc. 99-40 provides that a fee or expense incurred by a RIC may be waived or reimbursed if certain requirements are met. Section 4.03(1) contains the general rule that the benefit of a waiver or reimbursement of an advisory fee or management expense must be allocated to all shares based on net asset value (section 4.03(2) provides a non relevant exception).

Taxpayer represents that the advisor to the Participating Funds is proposing to waive the advisory fee it charges each Participating Fund in an amount equal to the Rule 12b-1 Plan distribution and/or service fees the fund incurs as a shareholder in Central Fund. Under the proposed plan dividends paid to Participating Funds, as shareholders of Central Fund, will not be affected, but dividends paid to shareholders of a Participating Fund will be augmented by the amount being waived. The fee waived by Advisor will be allocated among the shares of the Participating Fund based on net asset value.

Central Fund and Participating Funds are each treated as separate corporations pursuant to § 851(g). Because the amount of the waiver of the advisory fee will be allocated among the shareholders of a Participating Fund based on the net asset value of the shares, the waiver complies with the general rule of section 4.03(1) of Rev. Proc. 99-40.

## CONCLUSION

Advisor's waiver of its advisory fee for each Participating Fund, as described in this ruling, will have no effect on whether dividends paid by Central Fund will be eligible for the deduction for dividends paid under §§ 561 and 852.

Except as specifically ruled upon above, no opinion is expressed or implied regarding the federal tax aspects of this transaction. Solely for purposes of this ruling, we have assumed that any agreement for advisory services, between Advisor, Central Fund or a Participating Fund, provides for reasonable compensation.

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

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to the taxpayer and to a second representative of the taxpayer.

Sincerely,

Susan Thompson Baker  
Assistant to the Chief, Branch 2  
Office of Associate Chief Counsel  
(Financial Institutions & Products)