

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact:

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In Re:

Refer Reply To:

CC:CORP:B02 – PLR-166287-03

Date:

March 24, 2004

**LEGEND:**

Corp a =

State X =

Date 1 =

Date 2 =

Year 3 =

Dear

This is in reply to your letter dated November 11, 2003, requesting a ruling under section 305 of the Internal Revenue Code (“Code”). Additional information was submitted in a letter dated February 5, 2004. The relevant information submitted in the request and subsequent correspondence is summarized below.

Corp A is an investment company registered with the Securities and Exchange Commission under the Securities Act of 1933 and the Investment Company Act of 1940. Corp A is incorporated in State X and engages in business as a diversified, closed-end management investment company. As a closed-end fund, its shares are not

PLR-166287-03

redeemable at the option of its shareholders. Corp A has elected to be taxed as, and has qualified as, a regulated investment company under section 851 of the Code.

The management of Corp A believes that the market may undervalue its stock by trading at prices less than the value of the pro rata portion of its assets allocable to such shares. To encourage the market to value Corp A's stock at a price more closely reflecting the value of its underlying assets, Corp A proposes to offer to redeem a portion of its stock pursuant to a tender offer. The offering will be at a price equal to the net asset value of the shares on a date subsequent to the receipt of all tenders.

The representations set forth below have been made by Corp A in connection with the proposed tender offer described above.

(a) Corp A intends to qualify annually and be taxed as a regulated investment company under part I of Subchapter M of the Code. Furthermore, the company intends to distribute substantially all of its investment company taxable income and net realized capital gains at least annually.

(b) Corp A is not required by its charter, bylaws or otherwise to redeem any of its stock, and the shareholders of Corp A have no right to require Corp A to make a tender offer or otherwise redeem any of its stock. The Board of Directors of Corp A has a fiduciary duty to the company and its shareholders to consider the appropriateness of any share repurchase. The Board of Directors of Corp A has not, in any manner, relinquished its discretion in carrying out its fiduciary duties.

(c) The redemptions undertaken pursuant to the proposed tender offer are isolated transactions and are not related to any other past or future transactions.

(d) The proposed tender offer is motivated solely by the company's business considerations and is not motivated by any intent of Corp A to confer a federal income tax benefit on any shareholder.

(e) The proposed tender offer is not part of a plan to periodically increase the proportionate share of any shareholder in the assets or earnings and profits of Corp A.

(f) At the present time, Corp A has no absolute commitment to make any further tender offers subsequent to the presently proposed tender offer. However, it is possible that Corp A will make additional tender offers in future years based on circumstances prevailing at that time.

PLR-166287-03

(g) Corp A has not redeemed any of its shares since its creation on Date 1, other than its Date 2 tender. Corp A has also repurchased some of its shares on the open market pursuant to the Year 3 repurchase.

Based solely on the information submitted and the representations made, we rule on the application of section 305 to the proposed tender offers as follows:

(1) If undertaken, the redemption of Corp A stock pursuant to the proposed tender offer, will constitute a single and isolated transaction. If consummated, the proposed tender offer will not result in a deemed distribution under section 305 of the Code with respect to any shareholder of Corp A, regardless of whether such shareholder has a portion of his or her stock redeemed in the transaction. See §1.305-3(e), Examples (10) and (11). See also Rev. Rul. 77-19, 1979-1 C.B. 84.

The above ruling only applies section 305 to the shareholders of Corp A who do not participate at all or to those who partially participate in the proposed tender offer. We express no opinion as to the federal income tax treatment of the proposed tender offer under sections 301 or 302 for those shareholders who participate in whole or in part in the proposed tender offer. Furthermore, we express no opinion about the tax treatment of the proposed tender offer under any other provision of the Code or regulations, or the tax treatment of any conditions existing at the time of, or effects resulting from, the proposed tender offer that are not specifically covered by the foregoing ruling.

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

A copy of this letter must be attached to any income tax return to which it is relevant.

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

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

PLR-166287-03

4

*Gerald B. Fleming*

Gerald B. Fleming

Senior Technician Reviewer, Branch 2

Office of Associate Chief Counsel

(Corporate)