

INTERNAL REVENUE SERVICE
U.I.L.:4982.00-00
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May 21, 1999

Legend:

Fund =

State =

Date 1 =

Dear

This is in reply to a letter dated March 1, 1999, requesting rulings on behalf of Fund. You have requested consent for Fund to revoke its election under § 4982(e)(4)(A) of the Internal Revenue Code effective for the calendar year ending December 31, 1999. Additionally, you have requested that in calculating Fund's required distribution under § 4982 for calendar year 1999, for purposes of §§ 4982(b)(1)(B) and (e)(2), Fund's capital gain net income will be determined on the basis of capital gains and losses during the 10-month period from January 1, 1999 through October 31, 1999.

FACTS

Fund was organized as a State business trust on Date 1. Fund is registered with the Securities and Exchange Commission as an open-end, diversified, management investment company under the Investment Company Act of 1940, 15 U.S.C. § 80a-1 et seq. Fund has qualified and elected to be treated as a regulated investment company (RIC) under part I of subchapter M of the Code. Fund operates in a manner intended to continue to qualify it as a RIC, and the policy of Fund is to distribute all or substantially all of its income.

In order to coordinate the income tax provisions applicable to a RIC with the provisions of § 4982, Fund elected for its initial tax year, pursuant to § 4982(e)(4)(A), to use its calendar tax year in lieu of the 1-year period ending on October 31, for purposes of calculating the required distribution amount under §§ 4982(b)(1)(B) and (e)(2). Fund assumed that the election

under § 4982 would relieve the administrative burden associated with dual calculations of capital and foreign currency gains and losses under the excise tax and subchapter M regimes. However, Fund's experience is that the election has created additional administrative complexities primarily due to time constraints in declaring required excise tax distributions. Further, Income Tax Regulations coordinating the excise tax and subchapter M rules have greatly reduced the administrative burden referred to above. Therefore, Fund now desires to revoke its election under § 4982(e)(4).

Fund represents that it desires to revoke its § 4982(e)(4)(A) election due to administrative and non-tax related financial burdens caused by the election, and it is not seeking to revoke the election for the purpose of preserving or securing a tax benefit. Fund further represents that it will neither benefit through hindsight nor prejudice the interests of the United States government by the revocation of the election. In addition, Fund represents that in the event that it is permitted to revoke the election, it will not make a subsequent election under § 4982(e)(4)(A) for a period of five calendar years following the year for which the revocation is effective.

LAW, ANALYSIS AND CONCLUSIONS

Section 4982(a) imposes an excise tax on every RIC for each calendar year equal to 4 percent of the excess (if any) of the "required distribution" for the calendar year over the "distributed amount" for the calendar year.

Section 4982(b)(1) defines "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 the RIC's capital gain net income for the 1-year period ending on October 31 of such calendar year.

Section 4982(e)(2)(A) provides that for purposes of § 4982, in general, the term "capital gain net income" has the meaning given to that term by § 1222(9), but determined by treating the 1-year period ending on October 31 of the calendar year as the RIC's tax year.

Section 4982(e)(2)(B) provides that a RIC's capital gain net income is reduced by the amount of the RIC's net ordinary loss for the calendar year, but not below the RIC's net capital gain. Section 4982(e)(2)(C)(i) provides that, for purposes of § 4982, the term "net capital gain" has the meaning given that term by § 1222(11), but determined by treating the 1-year period ending on October 31 of the calendar year as the RIC's tax 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 the 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 under § 4982(b)(1). Section 4982(e)(4)(B) provides that, once made, such election may be revoked only with the consent of the Secretary.

Based on the information submitted and the representations made, we conclude that Fund desires to revoke its election under § 4982(e)(4)(A) because of administrative burdens and not because of any federal tax-related financial burden caused by the election. Fund does not seek to revoke its election to preserve or secure a federal tax benefit. Additionally, Fund will neither benefit through hindsight nor prejudice the interests of the United States government by being permitted to revoke the election.

Accordingly, pursuant to § 4982(e)(4)(B), the Secretary consents to the revocation of the election made by Fund under § 4982(e)(4)(A) effective for calendar year ending December 31, 1999, and subsequent years. In calculating the "required distribution" for the 1999 calendar year, for purposes of §§ 4982(b)(1) and 4982(e)(2), the capital gain net income of Fund will be determined on the basis of the capital gains and losses taken into account during the 10-month period from January 1, 1999 through October 31, 1999.

As a condition to the Secretary's consenting to the revocation pursuant to § 4982(e)(4)(B), Fund may not make a subsequent election under § 4982(e)(4)(A) for a period of 5 calendar years following the first year to which the grant of revocation applies, that is, 2000 through 2004.

Except as specifically ruled upon above, no opinion is expressed or implied as to the treatment of Fund for federal excise or income tax purposes other than as specified herein. In particular, no opinion is expressed concerning Fund's qualification as a RIC.

This ruling is directed only to the taxpayer that requested 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 returns filed by Fund for the first tax year to which this letter applies.

Sincerely yours,

Assistant Chief Counsel
(Financial Institutions & Products)

By: _____
Alvin J. Kraft
Chief, Branch 1

Enclosure:
Copy of this letter
Copy for 6110 purposes