

Internal Revenue Service

Index Numbers: 0561.05-00; 0562.03-02;
0851.00-00; 0852.00-00

Number: **199920031**

Release Date: 5/21/1999

Department of the Treasury

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CC:DOM:FI&P:2/PLR-119850-98

Date:

February 22, 1999

Legend:

State =

Fund =

Advisor =

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This letter responds to your request for a ruling dated October 20, 1998, and subsequent correspondence dated December 15, 1998, submitted on behalf of Fund, that the award of "points" under an airline awards program will be treated for federal income tax purposes as an adjustment of an investor's purchase price for its shares, and will result in an adjustment to its basis in those shares; and that the operation of the airline awards program, including the redemption of points, will not result in the payment of preferential dividends by Fund within the meaning of section 562(c) of the Internal Revenue Code.

FACTS

Fund is organized as a corporation under the laws of State. It is registered as an open-end management investment company under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., as amended (the 1940 Act). Fund has elected to be operated in such a manner as to qualify as a regulated investment company (RIC) under Subchapter M, part 1, of the Code, and intends to continue to qualify as such.

Advisor serves as the investment advisor, administrator and distributor of Fund. Fund currently sells shares at net asset value without the imposition of a sales charge.

Shares of Fund are sold subject to a plan adopted pursuant to Rule 12b-1, 17 C.F.R. 270.12b-1, under the 1940 Act ("Rule 12b-1 plan") and also to a shareholder services plan.

Advisor, in its capacity as distributor for Fund, proposes to adopt an airline awards program as an incentive to the purchase of shares in Fund. The additional assets thus attracted will benefit Fund's shareholders by maximizing economies of scale. The airline awards program (the program) is proposed to be adopted as follows.

A qualifying investor who chooses to participate in the program will be awarded one point for every new dollar invested in the Fund. A qualifying investor is any investor other than IRA accounts, 401(k) plans, and other qualified retirement plans (who cannot hold awards of the type proposed because of prohibitions under ERISA on their receipt by custodians or trustees or their distribution to IRA account owners or plan participants). A qualifying investor will be asked in the Fund's Account Application whether the investor desires to participate in the program.

A qualifying investor who has accumulated _____ points can redeem these points for one round-trip coach ticket (including all taxes and fees) for travel in North American on any airline up to a maximum ticket price of _____.

A qualifying investor who chooses to participate in the program will be subject to a contingent deferred sales charge equal to _____ of the net asset value of shares at the time of purchase if the shares subject to the program are redeemed within 12 months of the purchase date of the shares.

A qualifying investor who is awarded points under the program will be informed of the fair market value of the points and informed that the investor's basis in the shares giving rise to the award of points should be adjusted downward by the fair market value of the points as a purchase price adjustment.

Advisor will arrive at a fair market value for the points based on a comparison of the costs of purchasing frequent flyer miles and by taking into account the following additional factors: (1) estimates on the probabilities that the points will eventually be redeemed by shareholders; (2) the fact that points can be utilized only within the confines of Fund's program and cannot be combined with any other frequent flyer program; (3) the fact that the maximum value of one point cannot exceed one cent because under the program's terms a holder of _____ points is entitled to a maximum benefit of _____. Advisor represents that all points issued under the program will have the same fair market value to all investors participating in the program. In consideration of the foregoing factors, Advisor anticipates that the fair market value of one point under the program will be between _____.

Reinvestment of dividends and capital gains do not create points. A maximum of points will be awarded to an investor in any calendar year. Adjustments may be made to the program if, for example, it appears that investors are redeeming and repurchasing shares for the purpose of creating points.

Advisor, in its capacity as the distributor for Fund, will purchase the airline tickets out of its own resources. Neither its compensation as advisor, nor as administrator, nor as distributor will be in any way adjusted for or dependent upon the expenses of ticket purchase.

Advisor, in its capacity as the distributor for Fund, will be free to alter, change or discontinue the program at any time in its sole discretion. It will issue statements quarterly to each investor who holds points. Accounting for the redemption of points will be on a first-in, first-out basis.

All points will expire three years from the date of the last investment of or more. Points are nontransferable and are not redeemable for cash.

LAW & ANALYSIS

Section 851(a) of the Code defines a regulated investment company, in part, as a domestic corporation which, at all times during the taxable year, is registered under the Investment Company Act of 1940 as a management company.

Section 851(b) of the Code limits the definition of a regulated investment company, or RIC, to a corporation that elects to be a RIC and that meets certain gross income and diversification requirements.

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

Section 852 of the Code provides that a RIC is not taxable under Subchapter M, Part I, unless its deduction for dividends paid (as that term is defined in section 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 of the Code sets forth a definition of the deduction for dividends paid. Rules applicable in determining dividends eligible for the dividends paid deduction are provided in section 562. Except as otherwise provided, section 562(a)

states that the term "dividend" includes only dividends described in section 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 accumulated after February 28, 1913, or (2) out of its earnings and profits of the taxable year (computed as of the close of the taxable year without diminution by reason of any distributions made during the taxable year), without regard to the amount of the earnings and profits at the time the distribution was made.

Section 562(c) of the Code provides that the amount of any distribution shall not be considered as a dividend for purposes of the dividends paid deduction under section 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 the former class is entitled (without reference to waivers of their rights by shareholders) to be preferred.

The proposed award of points to investors in Fund upon the purchase of shares in Fund is integrally related to that purchase. It is well established that if, as part of a transaction involving a purchase of property, the purchaser receives other consideration, either from the seller of the property or from a third party, as an inducement to the purchase, the fair market value of the other consideration received is treated as a rebate that adjusts the purchase price of the property. Accordingly, a downward adjustment to basis in the newly purchased shares is required under section 1016. Rev. Rul. 76-96, 1976-1 C.B. 23 (rebate paid by automobile manufacturer to customer who purchased automobile from dealer).

HOLDINGS

Based on the facts as represented by Fund, we rule as follows:

1. The award to an investor in Fund of points under the airline awards program described in this letter will be treated for federal income tax purposes as an adjustment of the investor's purchase price in its shares, and will result in an adjustment to its basis in those shares.
2. The award to an investor in Fund of points under the airline awards program described in this letter and the operation of that program, including the redemption of points for airline tickets, will not result in the payment of preferential dividends by Fund within the meaning of section 562(c) of the Code.

No opinion is expressed, nor was a ruling requested, as to whether the award of points in general constitutes the payment of dividends required to be reported under the provisions of section 6042. Further, no opinion is expressed as to whether the award

of points is properly treated as an adjustment to the purchase price of shares or as to whether the award of points or operation of the airline awards program gives rise to the payment of preferential dividends if changes or adjustments are made to the airline awards program described in this letter. No opinion is expressed as to the appropriate valuation of the points awarded under the airline awards program described in this letter. Finally, no opinion is expressed as to whether Fund qualifies as a RIC that is taxable under subchapter M, part I of the Code.

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

A copy of this letter should be attached to the Federal income tax return of Fund for each taxable year in which points are awarded under the airline awards program described in this letter.

Sincerely,

Assistant Chief Counsel
(Financial Institutions & Products)

By: _____
William E. Coppersmith
Chief, Branch 2