

INTERNAL REVENUE SERVICE  
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April 14, 1999

**Legend:**

Fund =

State =

Date 1 =

Date 2 =

Prior Fund =

Year 1 =

Adviser =

a =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

b =

Date 7 =

Year 2 =

Year 3 =

Dear

This is in response to a letter dated December 3, 1998, requesting a ruling on behalf of Fund. You have requested a ruling that consents to the revocation of an election made by

Fund under § 4982(e)(4)(A) of the Internal Revenue Code, effective for the calendar year ended Date 1. You have also requested other rulings related to the revocation of the election under § 4982(e)(4)(A).

**Facts:**

Fund was incorporated under State law on Date 2 under the name Prior Fund and changed its name to its current name in Year 1. Fund is an open-end investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940, 15 U.S.C. § 80a-1, et seq. Fund elected to be taxed as a regulated investment company (RIC) under subchapter M for its initial tax year ended Date 3 and has qualified as a RIC since that date. Fund's investment objectives range from capital appreciation to current income. To achieve these objectives, Fund generally invests in common stocks of various domestic companies.

Adviser serves as Fund's investment adviser. In this capacity, Adviser renders accounting and tax services, which include performing necessary computations in connection with the declaration of dividends and distributions for a RICs, including Fund.

Fund maintained its books on a calendar year for tax years up to and including Date 4. Pursuant to § 442 and § 1.442-1(c) of the Income Tax Regulations, Fund intends to change its tax year to a fiscal year ending June 30 and intends to file a short-year tax return for the period ended Date 5. The election to measure capital gain net income using the calendar year, as provided in § 4982(e)(4)(A), was initially made with the intention to simplify the computation of required distributions of capital gain net income by performing those computations to be consistent with its calendar year tax returns. It was felt that the election would minimize the complexity of tax accounting and enhance the accuracy of the related excise tax distribution calculations.

Among the other RICs for which Adviser performs investment advisory services, b maintain their books and compute their taxable income based on a June 30 year end. Fund's Board of Directors believes that a change in the year end of Fund to June 30 to conform to the year end of the other RICs will relieve some administrative and financial burdens and also help to manage the funds in a more efficient manner. The § 4982(e)(4)(A) election is only available to a RIC that has a tax year ending November 30 or December 31. Fund will have a tax year ending June 30 following the accounting period change, which will not conform to an election under § 4982(e)(4)(A). Additionally, the benefits of

the § 4982(e)(4)(A) election, including the minimization of tax accounting complexity and the enhancement of the accuracy of the related distribution calculations, will be completely eliminated by the change in year end.

Fund represents that it is not seeking to revoke the § 4982(e)(4)(A) 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 aforementioned 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.

Section 4982(e)(5) provides that any foreign currency gain which is attributable to a § 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 amount of the ordinary income of the RIC for such calendar year but shall be taken into account in determining the ordinary income of the RIC for the following calendar year. In the case of any company making an election under § 4982(e)(4), the preceding sentence shall be applied by substituting the last day of the company's taxable year for October 31.

For purposes of determining the amount that a RIC may designate as a capital gain dividend for a tax year, § 852(b)(3) and § 1.852-11(e) of the Regulations provide special rules that exclude post-October losses from the computation. Section 852(b)(8) provides that to the extent provided in regulations, the taxable income of a RIC (other than a company to which an election under § 4982(e)(4) applies) shall be computed without regard to any net foreign currency loss attributable to transactions arising after October 31 of such year, and any such net foreign currency loss shall be treated as arising on the first day of the following tax year. Section 1.852-11(f) provides that a RIC may elect, in accordance with procedures in § 1.852-11(i), to compute its taxable income for a tax year without regard to part or all of any post-October capital loss or post-October foreign currency loss for that year. Similarly, §§ 852(c)(2) and 1.852-11(g) provide that the earnings and profits of a RIC for a tax year are determined without regard to any post-October capital loss or post-October foreign currency loss for that year. However, § 1.852-11(b) provides that the regulations under § 1.852-11 shall not apply to any post-October capital loss or post-October foreign currency loss of a RIC attributable to a tax year for which an election is in effect under § 4982(e)(4) with respect to the RIC. Consequently, for purposes of the aforementioned rules, it is necessary to determine the first tax year for which the election under § 4982(e)(4) will not apply.

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. Also, Fund is changing to a tax year to which the provisions of § 4982(e)(4)(a) are not applicable. 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 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 the calendar year ended Date 1 and subsequent years. In calculating the "required distribution" for the calendar year ended Date 1, 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 Date 6 through Date 7. The calendar year ended Date 1 shall be the first tax year of Fund for which the election under § 4982(e)(4) will not apply for purposes of determining post-October losses as applied to §§ 852(b)(2), 852(b)(3), 852(b)(8), and 852(c)(2) and the corresponding regulations under § 1.852-11.

As a condition to the Secretary's consenting to the revocation pursuant to § 4982(e)(4)(B), Fund may not make, if applicable, a subsequent election under § 4982(e)(4)(A) for a period of 5 calendar years following the year to which the grant of revocation applies, that is, Year 2 through Year 3.

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