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Refer Reply To:
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Date:
December 20, 2000

LEGEND

- Trust =
- Funds =
- State =
- Manager =
- Distributor =
- Program =
- Membership Number =
- m =
- n =
- p =
- c =
- q =

Dear :

This letter responds to your request for rulings dated June 2, 2000, and subsequent correspondence, submitted on behalf of a group of mutual funds (referred to individually as Fund and collectively as Funds). Each Fund has requested rulings that the award of "points" under an 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 award of points and the subsequent redemption of points, will not result in the payment of preferential dividends by a Fund within the meaning of § 562(c) of the Internal Revenue Code.

Identical rulings have been requested on behalf of a group of possible future mutual funds. None of these possible future mutual funds have commenced operations, and there is no definite time provided when, if ever, they will commence operations. Any situation presented for these plans would be hypothetical. The Service does not issue rulings on hypothetical situations. Section 7.02 of Rev. Proc. 2000-1, 2000-1 I.R.B. 21. Accordingly, no ruling will be issued regarding the possible future mutual funds.

FACTS

The Funds are part of the Trust, a series fund that is organized as a State business trust. The Trust is registered as an open-end management investment

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company under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., as amended (the 1940 Act). As part of a series fund, each Fund is treated as a separate corporation, as provided in § 851(g). In accordance with Subchapter M, Part I, of Subtitle A of the Code, each Fund has elected, or will elect, in its initial federal income tax return to be taxed as a regulated investment company (RIC) and has maintained or intends to maintain its election and qualification as a RIC in each tax year thereafter.

The Manager serves as manager of the Funds and has overall responsibility, subject to the supervision of the Board of Trustees, for engaging sub-advisors and for monitoring and evaluating the management of the assets of each Fund by the sub-adviser. The Manager also provides certain administrative services necessary for the Funds' operations. The Distributor serves as distributor and principal underwriter of the Funds. Shares of each Fund are offered to the public on a continuous basis.

The Funds offer a choice of several different classes of shares, each with its own sales load and expense structure. All of the classes of shares meet the requirements of Rule 18f-3 of the 1940 Act. Some of the classes of shares have no ownership restrictions. Each share of a Fund, regardless of class, represents an equal pro-rata interest in the Fund and has identical voting, dividend, liquidation and other rights (subject to differences in class specific expenses and contingent deferred sales charges).

The Trust, on behalf of the Funds, has adopted a Plan of Distribution pursuant to Rule 12b-1, 17 C.F.R. 270.12b-1, under the 1940 Act and also a shareholder services plan. Shares of some classes of shares may be subject to an initial sales load, a contingent deferred sales charge, and/or future automatic conversion to another class of shares. Investors purchasing a certain class of shares will receive, as a bonus, additional shares having a value equal to p% of the amount invested. These additional shares will be paid for by the Distributor. The Distributor expects to recover these costs through fees received under the Plan of Distribution adopted for that class of shares.

As an inducement to purchase shares in the Funds, the Manager has implemented a Program for certain investors in the Funds who purchase their shares directly through the Distributor and who provide a valid Membership Number at the time of application (members). The additional Fund assets thus attracted will benefit the Fund's shareholders by maximizing economies of scale. Under the Program, members can receive up to a certain number of points per calendar year when investing in the Funds. A member who has accumulated over a certain number of points but less than a certain number of points can redeem these points towards their stay at certain properties. In addition, members are also entitled to transfer these points to accounts with participating program partners. This includes: airline, ground transportation, and other retail point programs. These points are earned immediately upon purchase and are not subject to forfeiture or expiration.

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Shares issued under the Program are from Class c. Shares of Class c are available to the general public. Shares of Class c are not subject to automatic conversion to another class of shares and investors purchasing Class c shares will not receive, as a bonus, additional shares. There is no initial sales load but there may be a contingent deferred sales charge.

A qualifying investor who chooses to participate in the Program will receive 1 point for every \$m invested (1 point for every \$p during the first q days of the initial offering). A qualifying investor is any investor other than Individual Retirement Accounts and other retirement accounts. Participation in the Program is valid only for new purchases of the Funds by individual, joint and custodial accounts.

Each Fund will include an insert with the “confirm” for the purchase transaction notifying the affected shareholder that it will receive points, that such points have a value of \$n per point and that the shareholder will need to reduce its basis in the Fund shares by the total value of the points. In addition, each Fund will include this insert with the year-end tax information (separate from the Form 1099-DIV) mailed to the shareholders.

The Manager has arrived at a fair market for the points based on its cost to purchase the points. Since these points are not subject to forfeiture or expiration, the fair market value of the points will be the Manager’s or an affiliate’s cost, which is anticipated to be \$n a point. The Manager represents that all points issued under the Program will have the same fair market value to all investors participating in the Program.

Reinvestment of dividends and capital gains do not create points. 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.

The Manager or an affiliate thereof will purchase the points out of its own resources and its compensation will not in any way be adjusted for or dependent upon the expense of the point purchase program. The Manager will be free to alter, change or discontinue the program at any time at its sole discretion.

LAW & ANALYSIS

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

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

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A corporation that is a RIC within the meaning of § 851 and that is taxable under Subchapter M, Part I, of Subtitle A of the Code pays tax on its investment company taxable income under § 852(b)(2). Section 852(b)(3) 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 provides that a RIC is not taxable under Subchapter M, Part I, of Subtitle A of the Code 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 sets forth a definition of the deduction for dividends paid. Rules applicable in determining dividends eligible for the dividends paid deduction are provided in § 562. Except as otherwise provided, § 562(a) states that the term "dividend" 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 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) provides that the amount of any distribution shall not be considered as a dividend for purposes of 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 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 a Fund upon the purchase of shares in the 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 § 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 each Fund, we rule as follows:

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1. The award to an investor in a Fund of points under the 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 under § 1016.
2. The award of points and the subsequent redemption of points under the Program, as described in this letter, will not result in the payment of preferential dividends by a Fund within the meaning of § 562(c).

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 § 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 Program gives rise to the payment of preferential dividends if changes or adjustments are made to the Program described in this letter. No opinion is expressed as to the appropriate valuation of the points awarded under the Program described in this letter. Finally, no opinion is expressed as to whether any Fund qualifies as a RIC that is taxable under Subchapter M, Part I, of Subtitle A of the Code.

This ruling is directed only to the Funds. Section 6110(k)(3) 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 each Fund for each taxable year in which points are awarded under the Program described in this letter.

Sincerely,
Acting Associate Chief Counsel
(Financial Institutions & Products)
By: Alvin J. Kraft
Chief, Branch 1

Enclosures:

- Copy of this letter
- Copy for § 6110 purposes