Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:FIP:1-PLR-154811-01
Date:
November 7, 2001

 Fund   =
State A   =

Dear :

        This is in reply to a letter dated October 2, 2001, requesting rulings on behalf of
Fund. Fund requests a ruling granting permission for calendar year 2001 and
subsequent calendar years to revoke an election under § 4982(e)(4)(A) of the Internal
Revenue Code to use Fund's tax year (the calendar year) in lieu of the 1-year period
ending October 31, for purposes of calculating the required distribution amount under
§ 4982(b)(1)(B), § 4982(e)(2), § 4982(e)(5), and § 4982(e)(6). Further, Fund requests a
ruling that in calculating the required distribution under § 4982 for the calendar year
ending December 31, 2001, Fund's capital gain net income shall be determined on the
basis of capital gains and losses realized and recognized during the 10-month period
beginning on January 1, 2001, and ending on October 31, 2001; and its ordinary
income shall be determined by including foreign currency gains and losses attributable
to transactions under § 988 that are properly taken into account for the 10-month period
beginning on January 1, 2001, and ending on October 31, 2001.

Facts:

        Fund is a State A corporation that is registered with the Securities and Exchange
Commission as a no-load, non-diversified open-end investment company under the
Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq. Fund has elected and
qualified to be treated as a regulated investment company (RIC) under subchapter M of
Chapter 1 of the Code. Fund is treated as a separate corporation under § 851(g) for
federal income tax purposes.

        For calendar year 1998 (and subsequent years), Fund elected under
§ 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

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§ 4982(b)(1)(B), § 4982(e)(2), § 4982(e)(5), and § 4982(e)(6). Fund assumed that the election would relieve the administrative burden associated with dual calculations of capital gain net income and § 988 gain or loss 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 distributions to avoid the excise tax imposed by § 4982. Further, the promulgation of regulations that coordinate the excise tax and subchapter M rules has greatly reduced the administrative burden of having a tax year different from the period for determining Fund's required distributions under § 4982.

Fund represents that:

1. Its desire to revoke its election is due to administrative and non-tax related financial burdens caused by the election;

2. It is not seeking to revoke its election to preserve or secure a tax benefit;

3. It will neither benefit through hindsight nor prejudice the interests of the government as a result of being permitted to revoke the election; and

4. It will not make a subsequent election under § 4982(e)(4)(A) for five calendar years following the year of the grant of revocation.

Law and Analysis:

Section 4982(a), which was enacted as part of the Tax Reform Act of 1986 and is effective for calendar years beginning after December 31, 1986, 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) reduces the RIC's capital gain net income, but not below the RIC's net capital gain, by the amount of the RIC's net ordinary loss for the calendar year. 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 or loss 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 the calendar year but shall be taken into account in determining the RIC's ordinary income in the following calendar year. However, if a RIC has made an election under § 4982(e)(4), the preceding sentence shall be applied by substituting the last day of the RIC's tax year for October 31.

Section 4982(e)(6)(A) provides that for purposes of determining a RIC's ordinary income, § 1296 shall be applied as if the RIC's tax year ended on October 31. Section 4982(e)(6)(B) provides that any ordinary gain or loss from an actual disposition of stock in a passive foreign investment company during the portion of the calendar year after October 31 shall be taken into account in determining the RIC's ordinary income for the following calendar year. However, if a RIC has made an election under § 4982(e)(4), the preceding two sentences shall be applied by substituting the last day of the RIC's tax year for October 31.

Based on the information submitted and the representations made, we conclude that Fund's desire to revoke its election under § 4982(e)(4)(A) is due to administrative burdens and not because of any federal tax-related burden caused by the election. Fund does not seek to revoke its election to preserve or secure a federal tax benefit. Also, Fund will not benefit through hindsight or prejudice the interests of the government as a result of being permitted to revoke the election.

Conclusion:

Accordingly, pursuant to § 4982(e)(4), the Secretary consents to the revocation of Fund's election made under § 4982(e)(4)(A) effective for calendar year 2001 and for subsequent years. In calculating the "required distribution" for calendar year 2001, for purposes of § 4982(b)(1)(B) and § 4982(e)(2), the capital gain net income shall be determined on the basis of the capital gains and losses taken into account during the 10-month period from January 1, 2001, through October 31, 2001. Further, for calendar year 2001, the 10-month period from January 1, 2001, through October 31, 2001, shall be used for purposes of § 4982(e)(5).

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　　　　As a condition to the Secretary's consenting to the revocations 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 year to which the grant of revocation applies, that is, 2002 through 2006.

　　　　Except as specifically ruled upon above, no opinion is expressed or implied as to any federal excise or income tax consequences of Fund.

　　　　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.

　　　　　　　　　　　　　　　　Sincerely yours,
　　　　　　　　　　　　　　　　ALVIN J. KRAFT
　　　　　　　　　　　　　　　　Chief, Branch 1
　　　　　　　　　　　　　　　　Office of Associate Chief Counsel
　　　　　　　　　　　　　　　　(Financial Institutions & Products)

Enclosure:
　　Copy of this letter
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