

Internal Revenue Service

Department of the Treasury

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October 20, 1999

Fund 1 =
Fund 2 =
Year A =

Year B =

Year C =

Year D =

State =

Dear

This is in reply to a letter dated August 12, 1999, seeking the Secretary's consent to revoke, for Year A and subsequent calendar years thereafter, an election previously made by Fund 1 and Fund 2 ("Fund" or "Funds") under section 4982(e)(4)(A) of the Internal Revenue Code of 1986 as amended ("the Code").

The Funds also request that the calculation of their required distributions for the

PLR-114774-99

calendar year ending December 31, Year A, the capital gain net income and net gain or loss from foreign currency transactions included in ordinary income of the Funds be determined on the basis of capital gains and losses and foreign currency gains and losses respectively realized and recognized during the ten-month period from January 1 through October 31 of Year A.

Additionally, the Funds request that calendar Year A be the first taxable year of the Funds in which the election under section 4982(e)(4)(A) of the Code will not apply for purposes of determining the post-October losses, as applied to the Funds' computation of investment company taxable income and net capital gains under sections 852(b)(2) and 852(b)(8) of the Code as well as section 1.852-11(f) of the Treasury regulations, the determination of the Funds' earnings and profits under section 852(c)(2) of the Code and section 1.852-11(g) of the regulations, and for purposes of designating capital gain dividends under section 852(b)(3)(C) and section 1.852-11(e) of the regulations.

Each Fund is organized as a State corporation and is registered with the Securities and Exchange Commission under the Investment Company Act of 1940, 15 U.S.C. 80a-1 *et seq.* Each is treated as a separate corporation under section 851(g) of the Code and has elected to be treated and has qualified as a regulated investment company ("RIC") under subchapter M of the Code.

Both Funds use the accrual method of accounting for tax and financial accounting reporting purposes. For the tax year ending December 31, year B, each Fund elected, pursuant to section 4982(e)(4)(A), to use its tax year of December 31 in lieu of the one-year period ending on October 31, for purposes of the required distribution amount under sections 4982(b)(1), 4982(e)(2), and 4982(e)(5). Each Fund assumed that the election under section 4982 would minimize the complexity of tax accounting and enhance the accuracy of related distribution calculations.

The Funds' experience has been that the election has created significant difficulties resulting primarily from the time constraints in determining the ordinary income and capital gain net income distributions required to avoid the excise tax imposed by section 4982. The determination of the ordinary income and capital gain distributions necessary for declaring the required excise tax distribution must generally be made in late December. However, waiting until December to make this determination creates enormous administrative difficulties for the Funds. Further, the promulgation of Treasury regulations coordinating the excise tax and subchapter M provisions has greatly reduced the administrative burden of having a tax year different from the period used for determining its required distribution under section 4982. Accordingly, each Fund seeks consent to revoke its election to use its taxable year (the calendar year) for purposes of sections 4982(b)(1), 4982(e)(2), and 4982(e)(5).

Each Fund represents that:

PLR-114774-99

1. The 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 for the purpose of preserving or securing 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 its election;
4. It will not make a subsequent election under section 4982(e)(4)(A) for a period of five calendar years following the year of the grant of revocation.

LAW and ANALYSIS

Section 4982(a) of the Code, which was enacted as part of the Tax Reform Act of 1986 and is effective for tax 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 the term, "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 its capital gain income for the 1-year period ending on October 31 of such calendar year.

Section 4982(b)(2) provides that the amount determined under section 4982(b)(1) for any calendar year shall be increased by the excess (if any) of the "grossed up required distribution for the preceding calendar year," over the distributed amount for such preceding year.

Section 4982(b)(3) defines "grossed up required distribution" for any calendar year to mean the required distribution for such year determined by applying section 4982(b)(2) to such year but substituting "100 percent" for each percentage set forth in section 4982(b)(1).

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 its 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 in section 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 section 988 transaction and which is properly taken into account for the portion of the calendar

PLR-114774-99

year after October 31 shall not be taken into account when determining the amount of the ordinary income of the RIC for such 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 a 4982(e)(4)(A) election, 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, section 852(b)(3) and section 1.852-11(e) of the Treasury regulations provided special rules that exclude post-October losses from the computation. Section 852(b)(8) states that to the extent provided in the regulations, the taxable income of a RIC (other than a company that has made a 4982(e)(4)(A) election) 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 section 1.852-11(i), to compute its taxable income for a tax year without regard to part or all of any post-October foreign currency loss for that year. Similarly, sections 852(c)(2) and 1.852-11(g) provide that 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, section 1.852-11(b) provides that the regulations under section 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 section 4982(e)(4)(A) 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 section 4982(e)(4)(A) will not apply.

Based on the information submitted and the representations made, we conclude that each Fund's desire to revoke its election under section 4982(e)(4)(A) is due to administrative burdens and not because of any federal tax-related financial burden caused by the election. Neither Fund seeks to revoke its election for the purpose of preserving or securing a federal tax benefit. Nor will the Funds benefit through hindsight or prejudice the interests of the government as a result of being permitted to revoke the election.

CONCLUSION

Accordingly, pursuant to section 4982(e)(4)(B), the Secretary consents to the revocation of the election made by each Fund under section 4982(e)(4)(A) effective calendar Year A and subsequent years. In calculating the "required distribution" for calendar year A, for purposes of section 4982(b)(1) and (2), the capital gain net income will be determined on the basis of the capital gains and losses taken into account during the 10-month period from January 1, Year A through October 31, Year A. The net gain or loss from foreign currency transactions included in the ordinary income of each Fund may also be calculated during the 10-month period from January 1 through October 31 of Year A.

PLR-114774-99

In addition, Year A will be the first taxable year of the Funds in which the election under section 4982(e)(4)(A) of the Code will not apply for purposes of determining the post-October losses, as applied to the Funds' computation of investment company taxable income and net capital gains under sections 852(b)(2) and 852(b)(8) of the Code as well as section 1.852-11(f) of the Treasury regulations, the determination of the Funds' earnings and profits under section 852(c)(2) of the Code and section 1.852-11(g) of the regulations, and for purposes of designating capital gain dividends under section 852(b)(3)(C) and section 1.852-11(e) of the regulations.

As a condition to the Secretary's consent to the revocation pursuant to section 4982(e)(4)(B), each Fund may not make a subsequent election under section 4982(e)(4)(A) for a period of 5 calendar years following the year to which the grant of revocation applies, that is, Year C through Year D.

Except as specifically ruled upon above, no opinion is expressed or implied as to the federal excise or income tax consequences regarding the Funds.

This ruling is directed only to the taxpayers requesting it. Section 6110(k)(3) of the Code 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 return filed by each Fund for the first year to which this ruling applies.

Sincerely,

Assistant Chief Counsel
(Financial Institutions & Products)

By: _____

William E. Coppersmith
Chief, Branch 2

Enclosure:

Copy of this letter
Copy for section 6110 purposes