

INTERNAL REVENUE SERVICE  
Index Number: 4982.00-00  
Number: **199906018**  
Release Date: 2/12/1999

CC:DOM:FI&P:2 PLR-114357-98

November 10, 1998

Fund =  
Fund A =  
  
Fund B =  
  
Fund C =  
  
Fund D =  
  
Year a =  
Year b =  
Year c =  
Year d =  
State =

Dear

This is in reply to a letter dated June 22, 1998, seeking consent to revoke, for Year a and subsequent calendar years, elections previously made by Funds A, B, C, and D (collectively, "the Funds") under section 4982(e)(4)(A) of the Internal Revenue Code. Additionally, the Funds request that the calculation of their required distributions of capital gain net income under section 4982(e)(2) and foreign currency gains and losses under

section 4982(e)(5) for the calendar year ending December 31, Year a, be determined on the basis of capital gains and losses realized and recognized during the ten-month period from January 1, Year a, through October 31, Year a.

#### FACTS

Fund is organized as a State corporation. It is a diversified open-end management investment company under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq. Fund has elected and qualified, and intends to continue to qualify, to be treated as a regulated investment company ("RIC") under Subchapter M of the Code. Each of the Funds is organized as a separate portfolio of Fund, and under section 851(g) of the Code qualifies as a separate corporation. The Funds first elected to be taxed as RICs for their taxable years ending December 31, Year b.

Funds use the accrual method of accounting for tax and financial accounting purposes, and use the calendar year for tax purposes. Beginning with calendar Year b, Funds elected under section 4982(e)(4)(A) of the Code to use their taxable years (the calendar year) in lieu of the one-year period ending on October 31, for purposes of calculating the required distribution amount under sections 4982(b)(1)(B) and 4982(e)(2). Funds' taxable years have also been used in determining the treatment of foreign currency gains and losses under section 4982(e)(5). Funds assumed that the election under section 4982 would relieve the administrative burden associated with dual calculations of capital gain net income and section 988 gain or loss under the excise tax and subchapter M provisions of the Code.

The experience of Funds has been that the election has created additional administrative complexities primarily due to time constraints in declaring required excise tax distributions. Further, the promulgation of 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, Funds seek consent to revoke their elections to use their taxable years (the calendar year) for purposes of sections 4982(b)(1)(B), 4982(e)(2), and 4982(e)(5).

Funds represent that:

1. The desire to revoke their elections is due to administrative and non-tax related financial burdens caused by the election;
2. They are not seeking to revoke their elections for the purpose of preserving or securing a tax benefit;

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

4. They will not make subsequent elections under section 4982(e)(4)(A) of the Code for 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 "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 net income for the 1-year period ending on October 31 of such calendar 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 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 which is attributable to a section 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 investment company for the following calendar year. In the case of any company making an election under section 4982(e)(4), however, the preceding sentence shall be applied by substituting the last day of the company's taxable year for October 31.

#### CONCLUSION

Based on the information submitted and the representations made, we conclude that the Funds' desire to revoke their elections under section 4982(e)(4)(A) is because of administrative burdens and not because of any federal tax-related financial burden caused by the election. The Funds do not seek

to revoke their elections for the purpose of preserving or securing a federal tax benefit. Additionally, the Funds will neither benefit through hindsight nor prejudice the interests of the government as a result of being permitted to revoke their election.

Accordingly, it is held as follows:

1. Pursuant to section 4982(e)(4)(B), the Secretary consents to the revocation of the elections made by Funds under section 4982(e)(4)(A) effective for calendar Year a and subsequent years.
2. For purposes of section 4982(b)(1), the capital gain net income of the Funds as defined in section 4982(e)(2) and any foreign currency gains and losses as defined in section 4982(e)(5) will be determined on the basis of the capital gains and losses and foreign currency gains and losses taken into account during the 10-month period from January 1, Year a through October 31, Year a.
3. 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 its post-October losses, as applied to the Funds' computations of investment company taxable income and net capital gains under section 852(b)(2) and 852(b)(8) of the Code and section 1.852-11(f) of the Income Tax 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) of the Code 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), Funds 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 Funds.

This ruling is directed only to the taxpayers that requested 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 the federal income and excise tax returns filed by Funds for the first year to which this ruling applies.

Sincerely yours,

Assistant Chief Counsel  
(Financial Institutions & Products)

By: William E. Coppersmith  
William E. Coppersmith  
Chief, Branch 2