

Internal Revenue Service

Department of the Treasury

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Date:

November 16, 2001

TY:

Fund =

Year =

Date 1 =

Date 2 =

Date 3 =

This is in reply to a letter dated July 12, 2001, on behalf of Fund. Fund requests consent to revoke, for Year and subsequent calendar years, an election previously made under section 4982(e)(4)(A) of the Internal Revenue Code.

FACTS

Fund is a corporation registered under the Investment Company Act of 1940, as amended, as an open-end management investment company. Fund has elected to be treated as a regulated investment company ("RIC") in accordance with Subchapter M of the Code. Fund's taxable year is a calendar year.

Fund uses the accrual method of accounting for tax and financial accounting purposes. More than ten years ago, Fund elected under section 4982(e)(4)(A) of the Code to use its taxable 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), 4982(e)(2), 4982(e)(5), and 4982(e)(6). Fund assumed that the election under section 4982 would relieve the administrative burden associated with dual calculations of capital gains and losses under the excise tax and subchapter M provisions of the Code.

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The experience of Fund 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, Fund seeks consent to revoke its election under section 4982(e)(4) to use its taxable year (the calendar year) for purposes of sections 4982(b) and 4982(e).

Fund makes the following representations:

1. The desire to revoke its election is due to administrative and non-tax related financial burdens caused by the election;
2. Fund is not seeking to revoke its election for the purpose of preserving or securing a tax benefit;
3. Fund will neither benefit through hindsight nor prejudice the interests of the government as a result of being permitted to revoke the election; and
4. Fund will not make a subsequent election under section 4982(e)(4)(A) of the Code for five calendar years following the year of the grant of revocation.

APPLICABLE LAW

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 taxable 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 year after October 31 shall not be taken into account in determining the

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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 section 4982(e)(4), the preceding sentence shall be applied by substituting the last day of the RIC's taxable year for October 31.

Section 4982(e)(6)(A) provides that for purposes of determining a RIC's ordinary income, section 1296 shall be applied as of 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 section 4982(e)(4), the preceding two sentences shall be applied by substituting the last day of the RIC's tax year for October 31.

ANALYSIS and CONCLUSION

Based on the information submitted and the representations made, we conclude that the Fund's desire to revoke its election 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 Fund does not seek to revoke its election for the purpose of preserving or securing a federal tax benefit. Additionally, the Fund will neither benefit through hindsight nor prejudice the interests of the government as a result of being permitted to revoke its election.

Accordingly, it is held as follows:

1. Pursuant to section 4982(e)(4)(B), the Secretary consents to the revocation of the election made by Fund under section 4982(e)(4)(A) effective for Year and subsequent years.
2. Fund's capital gain net income for the taxable year ending on Date 3 shall be determined on the basis of capital gains and losses realized and recognized during the 10-month period beginning on Date 1 and ending on Date 2.
3. Fund's ordinary income for the taxable year ending on Date 3 shall be determined by including foreign currency gains and losses attributable to section 988 transactions and disposition of stock in a passive foreign investment company under section 1296 that are properly taken into account for the 10-month period beginning on Date 1 and ending on Date 2.

As a condition to the Secretary's consent to the revocation pursuant to section 4982(e)(4)(B), 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.

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

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the terms of a power of attorney on file in this office, copies of this letter are being sent to your authorized representatives.

Sincerely yours,
William E. Coppersmith
Chief, Branch 2
Office of Associate Chief Counsel
(Financial Institutions & Products)