

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Date of Communication: Not Applicable
Person To Contact:

ID No.
Telephone Number:

Refer Reply To:
CC:FIP:B02
PLR-124637-09
Date:
August 26, 2009

X =

State =

Year 1 =

Year 2 =

Dear :

This is in reply to a letter dated May 6, 2009, requesting the revocation of the election under section 4982(e)(4)(A) of the Internal Revenue Code.

FACTS

X is a nondiversified open-ended management investment company incorporated under the laws of State and registered with the Securities and Exchange Commission under the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-1 et seq. X has elected to be treated as a regulated investment company ("RIC") for purposes of Subtitle A, Chapter 1, Subchapter M of the Code. X uses the calendar year for tax purposes.

X represents that it made a timely election under section 4982(e)(4)(A) of the Code to use the twelve-month period ending December 31 for purposes of calculating the required distribution of capital gain net income under section 4982(b)(1)(B) to avoid payment of an excise tax under section 4982(a), beginning with its taxable year ended December 31 Year 1. This period was also used to determine the treatment of foreign currency gains and losses pursuant to section 4982(e)(5).

X represents that the election under section 4982(e)(4)(A) was made in an attempt to minimize the complexity of tax accounting and to enhance the accuracy of the related distribution calculations. X further represents, however, that its investment advisor has since determined that, due to the complexities associated with maintaining X's section 4982(e)(4)(A) election, greater accuracy in the computation of required ordinary income and capital gain income distributions can be achieved through the utilization of a one year period ending on October 31 for purposes of measuring foreign currency gains and losses and capital gain net income. X also represents that continuing the election under section 4982(e)(4)(A) will cause X to experience significant administrative difficulties in accurately determining the amount of dividends that should be declared and the related distributions.

Accordingly, X seeks consent to revoke its election under section 4982(e)(4)(A) to use its taxable year for purposes of sections 4982(b) and 4982(e).

X 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 in order to preserve or secure a tax benefit;
3. It will neither benefit through hindsight, nor prejudice the interests of the government if permitted to revoke its election; and
4. It will not make a subsequent election under section 4982(e)(4)(A) of the Code for at least five calendar years following the year of the grant of revocation.

APPLICABLE LAW

Section 4982(a) of the Code imposes an excise tax on every RIC for each calendar year equal to 4 percent of the excess 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 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.

ANALYSIS and CONCLUSION

Based on the information submitted and the representations made, we conclude that X’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. X does not seek to revoke its election for the purpose of preserving or securing a federal tax benefit. Additionally, X 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 X under section 4982(e)(4)(A) effective for the year ending December 31, Year 2 and subsequent years.
2. X’s calculation of its capital gain net income under section 4982(b)(1) and section 4982(e)(2) shall be determined on the basis of capital gains and losses and foreign currency gains and losses realized and recognized during the ten-month period from January 1 of Year 2 through October 31 of Year 2.

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

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter, including whether X qualifies as a RIC.

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

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your first-named authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant.

Sincerely,

Thomas M. Preston
Thomas M. Preston
Senior Counsel, Branch 2
Office of Associate Chief Counsel
(Financial Institutions & Products)