

**Internal Revenue Service**

Department of the Treasury

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Person to Contact:

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CC:FIP:1-PLR-160938-01

Date:

January 10, 2002

**Legend:**

Funds =

Dear :

This is in reply to a letter dated October 9, 2001, requesting a ruling on behalf of Funds. Funds request a ruling granting permission for the tax year ended December 31, 2001, and subsequent calendar years, to revoke elections under § 4982(e)(4)(A) of the Internal Revenue Code to use Funds' tax year (the calendar year) in lieu of the 1-year period ending October 31, for purposes of calculating their required distribution amounts under § 4982(b)(1)(B) and § 4982(e)(2). Further, Funds request a ruling that the calculation of their required distributions of capital gain net income under § 4982(e)(2) for the calendar year ending December 31, 2001, shall be determined based on the 10-month period beginning on January 1, 2001, and ending on October 31, 2001.

**Facts:**

Funds are diversified open-ended management investment companies registered with the Securities and Exchange Commission under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq. Each Fund has elected and intends to continue to qualify as a regulated investment company (RIC) under subchapter M of Chapter 1 of the Code. Funds use the accrual method of accounting for tax and financial accounting purposes and use a calendar year-end for tax purposes.

For calendar years prior to 2001, Funds elected, under § 4982(e)(4)(A), to use the calendar tax year in lieu of the 1-year period ending on October 31, for purposes of calculating amounts under § 4982(b)(1)(B) and § 4982(e)(2). Funds initially assumed that the elections would relieve them of the administrative burden associated with making dual calculations of capital gain net income under the excise tax and subchapter M regimes. However, Funds' experience is that the elections have created additional administrative complexities primarily due to time constraints in declaring

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required distributions to avoid the excise tax imposed by § 4982 and the need for Funds' investment advisor to perform capital gain net income calculations at a different time for Funds than for other taxpayers not subject to the § 4982(e)(4)(A) election.

Funds represent that:

1. Each Fund's desire is to revoke its election due to administrative and non-tax related financial burdens caused by the election;
2. No Fund is seeking to revoke its election to preserve or secure a federal tax benefit;
3. No Fund will benefit through hindsight or prejudice the interests of the government as a result of being permitted to revoke its election; and
4. No Fund will make a subsequent election under § 4982(e)(4)(A) for 5 calendar years following the year of the grant of revocation.

#### **Law and Analysis:**

Section 4982(a) 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) generally provides that the term "capital gain net income" has the meaning given to that term by § 1222(9), and is 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 determining 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.

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Based on the information submitted and the representations made, we conclude that Funds' desire to revoke their elections under § 4982(e)(4)(A) is due to administrative burdens caused by the elections. Funds do not seek to revoke their elections to preserve or secure a federal tax benefit. Also, Funds will neither benefit through hindsight nor prejudice the interests of the government as a result of being permitted to revoke their elections.

**Conclusion:**

Accordingly, pursuant to § 4982(e)(4)(B), the Secretary consents to the revocation of Funds' elections 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 10-month period from January 1, 2001, through October 31, 2001.

As a condition to the Secretary's consenting to the revocations pursuant to § 4982(e)(4)(B), Funds may not make subsequent elections under § 4982(e)(4)(A) for a period of 5 calendar years following the year to which the grant of revocation applies, i.e., 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 Funds.

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

Sincerely yours,  
PATRICK E. WHITE  
Assistant to the Chief, Branch 1  
Office of Associate Chief Counsel  
(Financial Institutions & Products)

Enclosure:

Copy of this letter  
Copy for 6110 purposes

cc: