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Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
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Date:
February 18, 1999

Legend:

Investment Adviser =

Investment Company =

Fund =

State A =

x =

y =

Dear Mr. :

This letter replies to a letter dated February 13, 1998 and other correspondence submitted by you as authorized representative of Fund. In general, Fund asks for a ruling that it will recognize neither gain nor loss as a result of distributing assets to redeem the stock of certain of its shareholders in the circumstances described below.

FACTS

Investment Company is a corporation organized under the laws of State A and is registered under the Investment Company Act of 1940, as amended, (the 1940 Act) as an open-end management investment company. Fund is a separate series of Investment Company and is treated as a separate corporation for the purposes of the

Internal Revenue Code. Fund is operated in a manner to qualify it as, and has elected to be treated as, a Regulated Investment Company (RIC) under Subchapter M of the Code. Investment Adviser is the sponsor of and serves as the investment adviser of Fund.

Fund has outstanding only a single class of stock. It has outstanding no "senior securities" within the meaning of section 18(g) of the 1940 Act except to the extent that certain investment-related transactions in options, futures, forward contracts, or repurchase agreements may be considered "senior securities" for purposes of the 1940 Act.

Since Fund is an open-end fund, shareholders typically purchase their shares from and sell their shares to Fund. Generally, investors purchase shares from Fund for cash. However, shareholders may purchase shares by electing to take their dividends in shares rather than cash.

The current prospectus for the Fund provides that Fund will redeem all full and fractional shares of Fund upon the request of shareholders, without charge, at their next determined net asset value after receipt of the notice of redemption. The prospectus also provides that, although redemption proceeds are generally paid in cash, the Fund has the option of honoring requests for redemption by distributing readily marketable securities owned by Fund valued as they would be for determining the Fund's net asset value.

For valid business reasons, Fund intends to invite shareholders to redeem their shares for their aliquot share of Fund's marketable securities. The redemptions will occur as follows. Fund will establish a record date with respect to the in-kind redemption that will occur between approximately x and y days prior to the date of the in-kind redemption. Only shareholders of record on the record date will be permitted to engage in the in-kind redemption. Shareholders of record on the record date may apply to redeem all but not less than all of their shares held on the record date. All redemptions will occur simultaneously. On the date of the redemption, each shareholder will receive marketable securities and, possibly, cash with a fair market value equal to the net asset value of the shares being redeemed.

Prior to the redemption, Fund will determine its aggregate tax basis in the marketable securities that it will distribute in redemption of its shares. In order to perform this calculation, it will divide Fund shares into the following three categories: (1) Category 1 shares - shares purchased during the six months prior to and including the record date (the six-month period) by any shareholder that holds more than 1% of the Fund's outstanding shares on the record date (a large shareholder) other than shares received as a result of the shareholder's electing to take dividends in shares

rather than cash;
(2) Category 2 shares - shares held by a shareholder that is not a large shareholder and that purchased all its shares during the six-month period other than shares received as a result of the shareholder's electing to take dividends in shares rather than cash; and
(3) Category 3 shares - shares that are neither Category 1 shares nor Category 2 shares.
For the purposes of allocating shares to these categories and performing the calculations described in the next paragraph, Fund will treat all shareholders that, to the actual knowledge of Fund, are persons specified in any of the paragraphs of subsection 267(b) of the Code, as a single shareholder. For the purposes of determining the number of Category 1 and Category 3 shares, Fund will assume sales of shares by a large shareholder during the six-month period were made first from the most recently purchased Category 1 shares and then, if all category 1 shares are deemed to have been sold, from Category 3 shares.

The aggregate tax basis of Fund in the assets it will distribute in redemption of Fund shares will be between 99% and 101% of the sum of :
(1) the aggregate amount paid by shareholders to purchase the Category 1 shares that are being redeemed (the Category 1 basis) ;
(2) the aggregate amount paid by shareholders to purchase the Category 2 shares that are being redeemed (the Category 2 basis); and
(3) an amount equal to Fund's aggregate tax basis in all its assets (minus the amounts of the Category 1 basis and the Category 2 basis) times a fraction the numerator of which is the total number of Category 3 shares being redeemed and the denominator of which is the total number of Category 3 shares outstanding on the date of redemption.

Fund represents that neither it nor its affiliates has entered into or will enter into any agreement with respect to the in-kind redemption with any person that is now or is likely to become a shareholder other than certain agreements that may exist between Fund and all its shareholders. Thus, for example, there is no agreement between Fund or an affiliate and any shareholder that contemplates the shareholder's purchasing additional shares of Fund for cash to be redeemed in kind. For purposes of this paragraph, the following are affiliates of Fund: Investment Company, Investment Adviser, any officer or employee of Investment Company or Investment Adviser, and any person holding an equity interest in Investment Adviser.

Following the redemption, redeeming shareholders that are tax-exempt investors, will have the option of retaining the assets received on redemption or contributing them to a new fund which will be a separate series of Investment Company. This new fund will have broadly similar investment policies to Fund but will be managed to optimize return for tax-exempt investors.

LAW AND ANALYSIS

Section 311(a) of the Code provides that, except as specified in section 311(b), "no gain or loss shall be recognized to a corporation on the distribution (not in complete liquidation) with respect to its stock of— ... (2) property." Section 852(b)(6) provides that section 311(b) shall not apply to a distribution by a RIC subject to Subchapter M, Part I, made in redemption of its stock upon the demand of a shareholder.

CONCLUSION

We conclude that Fund will recognize neither gain nor loss as the result of redeeming its shares upon the demand of shareholders in the transaction described above.

The ruling contained in this letter is based upon information and representations submitted by Fund and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for ruling, it is subject to verification on examination.

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.

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

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.

Sincerely,

Assistant Chief Counsel
(Financial Institutions and Products)

By: Alice M. Bennett
Alice M. Bennett
Chief, Branch 3

Enclosures: Copy of this letter
Copy for section 6110 purposes