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Letter Ruling 78-16: Corporate Trust; Election to be a Regulated Investment Company

December 27, 1978

You request a ruling with respect to the Massachusetts income tax status of The ***** Trust (the "Trust"), an open-end management investment company.

The Trust was originally organized as a trust with transferable shares under the laws of the ***** December 1, 1975 under the name *****. It has registered under Section 8 of the Investment Company Act of 1940.

The primary investment objective of the Trust is the tax free accumulation of dividend income. The Trust invest primarily in listed equity securities which are judged by management to offer the possibility of attractive dividend returns. Dividends and capital gains are not distributed to shareholders, but rather are accumulated within the Trust.

The Trust has not in any previous year made an election under Section 851(b) to be considered a regulated investment company. The Trust proposes to change its domicile from the ***** to the Commonwealth of Massachusetts. In connection therewith the Trust proposes to make an election under Section 851(b) of the Code to be a regulated investment company. The Trust will not, however, pay dividends to its shareholders which would meet the requirements of Section 852 of the Code to be taxed federally as a regulated investment company.

Massachusetts General Laws Chapter 62, Section 8(b) provides in part that a corporate trust which is a regulated investment company under Section 851 of the Code is not subject to taxation under Massachusetts General Laws Chapter 62.

To qualify as a regulated investment company under Section 851 of the Code, an investment company registered under the Investment Company Act of 1940 must meet the income and asset requirements of Section 851(b) and file an election to be a regulated investment company with its return, or have made such election for a prior taxable year. The election to be considered a regulated investment company must be made by computing its taxable income as a regulated investment company pursuant to Section 852 in its return for the year to which the election is applicable. No other method of making the election is permitted and an election once made is irrevocable. (U.S. Treas. Reg. s. 1.851-2)

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Since the stated objective of the Trust is to accumulate dividend income and its practice and intention is not to distribute income to its shareholders, it would appear that it does not meet the requirement of Section 852(a) and thus it would be unable to make an effective election to be a regulated investment company.

Based on these facts, and our interpretation of the applicable federal statutes and regulations, I am unable to issue the ruling which you have requested.

Very truly yours,

/s/Robert J. Kane

Robert J. Kane, Commissioner
Department of Revenue

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