

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

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Refer Reply To:
CC:ITA:4 – PLR-119780-01
Date:
July 3, 2001

In Re:

LEGEND:

Taxpayer =

Settling Parties =

Managing Settling Party =

State =

State Agency =

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Date 1 =

Date 3 =

Date 4 =

Dear _____ :

This letter responds to your letter dated March 21, 2001, requesting on behalf of Taxpayer an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to make a "relation-back" election under § 1.468B-1(j)(2)(ii) of the Income Tax Regulations. The taxpayers identified in the legend as Settling Parties are interested parties in that they are persons who may claim deductions for transfers to the escrow account that is the subject of the ruling request.

FACTS:

State Agency alleged that certain of Settling Parties violated environmental laws relating to waste disposal at a property in State and were responsible for environmental remediation. As a result, Settling Parties entered into an escrow agreement, effective on Date 1, with Taxpayer to fund the remediation. Several of Settling Parties transferred funds to Taxpayer as an escrow agent, to hold in an escrow account, and to administer, disburse, and distribute under the escrow agreement. The escrow account was established under the law of State and was intended to be a qualified settlement fund (QSF) in accordance with §§ 1.468B-1 to 1.468B-5. On Date 2 State Agency entered into an agreement with Settling Parties to provide for the environmental remediation, in which State Agency approved the escrow account.

Taxpayer relied on Managing Settling Party to arrange for preparation of the escrow account tax returns. Due to a series of miscommunications, the tax accountant selected by Managing Settling Party to prepare the 1999 tax return for the escrow account decided that the escrow account is not a QSF and that it should file Form 1041 instead of Form 1120-SF.

On Date 3, Managing Settling Party delivered documents, including a relation-back election, to the tax accountant that indicated that the escrow account is a QSF. Taxpayer had received extensions of time to file Form 1041 and the escrow account's tax return had not yet been filed. The following month the tax accountant reviewed the documents and determined that the escrow account is a QSF and should file Form 1120-SF. The tax accountant prepared both Forms 1041 and 1120-SF, attached

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election statements under § 1.468B-1(j)(2)(ii) to both forms, and filed them with the Service on Date 4. Date 4 was within the extended time for Taxpayer to file Form 1041.

RULING REQUESTED:

Taxpayer requests a ruling that (1) it acted reasonably and in good faith and that granting an extension of time to make the relation-back election will not prejudice the interests of the government, (2) an extension of time to make the relation-back election is granted, and (3) the election made on Form 1120-SF on Date 4 is timely.

CONCLUSION:

Taxpayer acted reasonably and in good faith. and granting Taxpayer an extension of time to make the relation-back election will not prejudice the interests of the government. An extension of time to make the relation-back election is granted, and the election Taxpayer made on Form 1120-SF on Date 4 is timely.

LAW AND ANALYSIS:

Section 1.468B-1(c) provides, in general, that a fund, account or trust is a "qualified settlement fund" if it satisfies each of the following three requirements:

(1) It is established pursuant to an order of, or is approved by, specified governmental entities (including courts) and is subject to the continuing jurisdiction of that entity;

(2) It is established to resolve or satisfy one or more claims that have resulted or may result from an event that has occurred and that has given rise to at least one claim asserting certain liabilities; and

(3) The fund, account, or trust is a trust under applicable state law, or its assets are otherwise segregated from other assets of the transferor and related persons.

Section 1.468B-1(j)(1) provides, in part, that a fund, account, or trust is not treated as the owner of assets of the fund, account, or trust until all three of the requirements of section 1.468B-1(c) are met. Prior to that time the transferor is treated as the owner of those assets. The "relation-back" rule of § 1.46833-1(j)(2)(i) provides that, if a fund, account, or trust meets the requirements of paragraphs (c)(2) and (c)(3) of § 1.468B-1 prior to the time it meets the requirements of paragraph (c)(1), the transferor and the administrator may jointly elect (a relation-back election) to treat the fund, account, or trust as coming into existence as a qualified settlement fund on the later of the date the fund, account, or trust meets the requirements of paragraphs (c)(2) and (c)(3) or

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January 1 of the calendar year in which all of the requirements of paragraph (c) are met. If a relation-back election is made, the assets held by the fund, account, or trust on the date the qualified settlement fund is treated as coming into existence are treated as transferred to the qualified settlement fund on that date.

Section 1.468B-1(j)(2)(ii) states that a relation-back election is made by attaching a copy of the election statement, signed by each transferor and the administrator, to (and as part of) the timely filed income tax return (including extensions) of the qualified settlement fund for the taxable year in which the fund is treated as coming into existence.

Section 1.468B-2(k)(3) states that the federal income tax return of a qualified settlement fund must be filed on or before March 15 of the year following the close of the taxable year of the qualified settlement fund unless the fund is granted an extension of time for filing under § 6081.

Section 301.9100-1(c) provides, in part, that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Code except subtitles E, G, H, and I. Section 301.9100-1(b) defines the term "regulatory election" as including an election the due date of which is prescribed by a regulation, revenue ruling, revenue procedure, notice, or announcement.

Section 301.9100-3 provides that requests for extensions of time for regulatory elections (other than automatic extensions covered in § 301.9100-2) will be granted when the taxpayer provides evidence (including affidavits) to establish that the taxpayer acted reasonably and in good faith, and granting relief will not prejudice the interests of the government.

Under 301.9100-3(b)(1), a taxpayer will be deemed to have acted reasonably and in good faith if the taxpayer --

(i) requests relief before the failure to make the regulatory election is discovered by the Service;

(ii) failed to make the election because of intervening events beyond the taxpayer's control;

(iii) failed to make the election because, after exercising reasonable diligence, the taxpayer was unaware of the necessity for the election;

(iv) reasonably relied on the written advice of the Service; or

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(v) reasonably relied on a qualified tax professional, and the tax professional failed to make, or advise the taxpayer to make, the election.

Under § 301.9100-3(b)(3), a taxpayer will be considered to not have acted reasonably and in good faith if the taxpayer --

(i) seeks to alter a return position for which an accuracy-related penalty could be imposed under § 6662 at the time the taxpayer requests relief and the new position requires or permits a regulatory election for which relief is requested;

(ii) was fully informed of the required election and related tax consequences, but chose not to file the election; or

(iii) uses hindsight in requesting relief. If specific facts have changed since the original deadline that make the election advantageous to a taxpayer, the Service will not ordinarily grant relief.

Section 301.9100-3(c) provides that the interests of the government will be prejudiced if, as a result of granting relief--

(i) the taxpayer's aggregate tax liability for all affected years will be lower than it would have been if the election had been timely made (taking into account the time value of money), or if the tax consequences of more than one taxpayer are affected by the election, extending the time for making the election may result in the affected taxpayers, in the aggregate, having a lower tax liability than if the election had been timely made; or

(ii) tax years that would have been affected by the election had it been timely made are closed by the statute of limitations before the taxpayer's receipt of a ruling granting relief under this section.

Accordingly, although Taxpayer did not file the relation-back election by the original due date of its return and did not obtain extensions of time to file Form 1120-SF, under the facts presented, we conclude that Taxpayer acted reasonably and in good faith. None of the circumstances delineated in § 301.9100-3(b)(3) are present in this case. Granting Taxpayer an extension of time to make the relation-back election will not prejudice the interests of the government.

HOLDING:

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Taxpayer is granted an extension of time to make an relation-back election for the escrow account. The election Taxpayer made on Form 1120-SF on Date 4 is timely. However, we express no opinion on whether the escrow account is a qualified settlement fund under §§ 1.468B-1 through 1.468B-4.

CAVEATS::

A copy of this letter must be attached to any income tax return to which it is relevant. We enclose a copy of the letter for this purpose. Also enclosed is a copy of the letter ruling showing the deletions proposed to be made in the letter when it is disclosed under § 6110 of the Internal Revenue Code.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any item discussed or referenced in this letter.

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

Sincerely,
Associate Chief Counsel
(Income Tax & Accounting)
By: Robert A. Berkovsky
Chief, Branch 4