

ACKNOWLEDGED SIGNIFICANT ADVICE, MAY BE DISSEMINATED

**Office of Chief Counsel
Internal Revenue Service**

**ACKNOWLEDGED 4/8/98
1998-006**

memorandum

CC:DOM:P&SI:2/TL-N-7635-97
JAQuinn

date: March 6, 1998

to: District Counsel, South Texas District

from: Assistant Chief Counsel (Passthroughs & Special Industries)
CC:DOM:P&SI

subject: Filing Requirements for a "Pure Trust" or "Pure Trust
Organization"

This is in response to your request for Significant Advice dated December 4, 1997, in connection with a question posed by the Director, D:Q:MS of the Austin Service Center regarding the tax requirements for a pure trust or pure trust organization ("pure trust").

DISCLOSURE STATEMENT

Unless specifically marked "Acknowledged Significant Advice, May Be Disseminated" above, this memorandum is not to be circulated or disseminated except as provided in Paragraph IV.A.6. of Notice N(35)000-143. This document may contain confidential information subject to the attorney-client and deliberative process privileges. Therefore, this document shall not be disclosed beyond the office or individual(s) who originated the question discussed herein and are working the matter with the requisite "need to know." In no event shall it be disclosed to taxpayers or their representatives.

Issues

1. Does a pure trust file a Form 1041?
2. Are there tax requirements for a pure trust?
3. Is an employer identification number ("EIN") required for a pure trust?

Conclusions

1. (a) The filing requirements for a pure trust depend on the tax classification of the entity. If a pure trust is classified as a trust, the pure trust must file a Form 1041.

(b) However, if the pure trust is classified as a trust but is wholly-owned by a single owner and reporting under section

1.671-4(b)(2)(i)(A) of the Income Tax Regulations, a Form 1041 is not required to be filed.

2. The tax requirements for a pure trust depend on the tax classification of the entity. If a pure trust is classified as a trust, the rules of part I, subchapter J, chapter 1 of the Internal Revenue Code, govern the taxation of the trust and its beneficiaries.

3. (a) Whether an employer identification number (EIN) is required for a pure trust depends on the tax classification of the entity. If a pure trust is classified as a trust, the pure trust is required to have an EIN.

(b) However, if the pure trust is classified as a trust but is wholly-owned by a single owner and reporting under section 1.671-4(b)(2)(i)(A) of the regulations, the pure trust is not required to have an EIN.

Facts

Your memorandum indicates that you were not furnished with background information including organizational documents for the pure trust. Therefore, we are providing general information in response to your questions. The information that you provided to us indicates that based on the information provided on the Form SS-4 the Austin Service Center assigned an EIN and a Form 1041 filing requirement for the pure trust.

Discussion

Section 6011(a) of the Internal Revenue Code provides that every person required to make a return or statement shall include therein the information required by the forms or regulations.

Section 6109(a)(1) of the Code provides that when required by regulations prescribed by the Secretary, any person required under the authority of title 26 to make a return, statement, or other document must include in the return, statement, or other document the identifying number as may be prescribed for securing the proper identification of such person.

Section 6109(c) of the Code provides that for purposes of section 6109, the Secretary is authorized to require the information as may be necessary to assign an identifying number to any person.

Sections 301.6109-1(a)(1)(ii)(C) and (D) of the Procedure and Administration Regulations require that non-individuals, including trusts, partnerships, or corporations, required to

furnish a taxpayer identifying number and certain individuals required to furnish a taxpayer identifying number use an EIN.

Section 301.6109-1(a)(2)(i) of the regulations provides that if a trust does not have a taxpayer identification number and the trustee furnishes the name and taxpayer identification number of the grantor or other person treated as the owner of the trust and the address of the trust to all payors pursuant to section 1.671-4(b)(2)(i)(A), the trustee need not obtain a taxpayer identification number for the trust until either (a) the first taxable year of the trust in which all of the trust is no longer owned by the grantor or another person, or (b) until the first taxable year of the trust for which the trustee no longer reports pursuant to section 1.671-4(b)(2)(i)(A). If the trustee has not already obtained a taxpayer identification number for the trust, the trustee must obtain a taxpayer identification number for the trust in order to report pursuant to section 1.671-4(a), (b)(2)(i)(B), or (b)(3)(i).

Section 1.6012-3(a)(ii) of the regulations provides that every fiduciary, or at least one of the joint fiduciaries, must make a return of income on Form 1041 (or by use of a composite return pursuant to section 1.6012-5) and attach the required form if the trust has items of tax preference (as defined in section 57 and the regulations thereunder) in any amount for each trust for which he acts, except a trust exempt under section 501(a), if such trust has for the taxable year any taxable income, or for the taxable year has gross income of \$600 or more regardless of the amount of taxable income.

We are providing the following discussion related to the classification of an entity for federal tax purposes for your information. We do not expect the service center personnel to perform a classification analysis as part of processing the Form SS-4. It is incumbent upon the taxpayer to properly complete the Form SS-4, stating the type of entity and the type of tax return that will be filed.

Section 301.7701-1(a) of the regulations provides that the Internal Revenue Code prescribes the classification of various organizations for federal tax purposes. Whether an organization is an entity separate from its owners for federal tax purposes is a matter of federal tax law and does not depend on whether the organization is recognized as an entity under local law.

Section 301.7701-1(b) of the regulations provides that the classification of organizations that are recognized as separate entities is determined under sections 301.7701-2, 301.7701-3, and 301.7701-4 unless a provision of the Internal Revenue Code (such as section 860A addressing Real Estate Mortgage Investment

Conduits (REMICs)) provides for special treatment of that organization. For the classification of organizations as trusts, see section 301.7701-4(a). That section provides that trusts generally do not have associates or an objective to carry on business for profit. Sections 301.7701-2 and 301.7701-3 provide rules for classifying organizations that are not classified as trusts.

The proper filing requirement for an entity depends on whether the entity is classified as a trust, partnership, corporation, association taxable as a corporation or as a disregarded entity under sections 301.7701-2 through 301.7701-4 of the regulations.

There is no organization classified as a "pure trust" or "pure trust organization" under the Internal Revenue Code or the accompanying regulations. In addition, neither the Internal Revenue Code nor the accompanying regulations provide for special treatment for a pure trust. Therefore, the pure trust, if it is determined to be an entity separate from its owner under section 301.7701-1(a), must be classified under sections 301.7701-2 through 301.7701-4 of the regulations. If the pure trust is not an entity separate from its owner, it is disregarded for tax purposes and the true owner of the property held by the pure trust must directly report all tax items on the owner's tax return and pay all taxes due. See Notice 97-24, 1997-16 I.R.B. 6, which deals with abusive or bogus trust schemes and makes clear that the substance of the transaction controls who must report and pay the taxes due.

If the pure trust is determined to be an entity separate from its owner and is not a business entity, it will be classified as a trust under section 301.7701-4(a). A trust is a taxable entity that must report on Form 1041 and is required to have an EIN. The rules of subparts A through D, part I, subchapter J, chapter 1 of the Code apply to trusts and their beneficiaries.

However, the grantor or another person may be treated as the owner of the trust under subpart E, part I, subchapter J, chapter 1 of the Code (sections 671 through 679). Generally, the grantor or another person will be treated as the owner of the trust if the grantor or other person retain certain powers or interests over the trust. In such a case, the reporting rules of section 1.671-4 of the Income Tax Regulations apply. If the trustee reports pursuant to section 1.671-4(b)(2)(i)(A), the trust does not need an EIN. Otherwise, the trust is required to have an EIN.

We have been informed by Submissions Processing, National Office that as of June 1996, the Philadelphia Service Center has rescinded the letter that states that a pure trust has no tax requirements and that an EIN is not required. Certain taxpayers had been incorrectly reading and misusing the letter. Submissions Processing, National Office is presently clarifying the CP 575 letter sent to taxpayers, which informs taxpayers of their filing requirements. In addition, the instructions to the Form SS-4 have been revised to provide that the taxpayer must enter (in all cases) on the Form SS-4 the type of entity and type of return that will be filed (for example, common trust fund, Form 1065).

Unfortunately, the promoters of various abusive trust schemes have taken the Philadelphia letter out of context and are concluding that neither the owner nor the trust is liable for any tax in order to promote their abusive trust schemes. We believe that the letter only intended to address the EIN question and certainly did not intend to suggest that there was no tax liability with respect to any income from the trust property.

Based on some materials that we have seen, a pure trust is sometimes referred to as a constitutional trust or as a common law trust or as a contract trust. Certain promoters sell these arrangements as tax shelters arguing that they are merely contracts between the grantor and the trustee and thus are not taxable under the United States Constitution, Article 1, Section 10, which provides that no state shall pass any law impairing the obligations of contracts. As noted above, the Code and regulations recognize a certain number of entities (trusts, corporations, etc.) and provide rules for their taxation. The notion that a pure trust is not subject to federal tax law is false. The sixteenth amendment to the United States Constitution empowers Congress to lay and collect taxes on incomes, from whatever source derived.

In all cases, it should be made clear to taxpayers who request an EIN that the only options available to the taxpayer are those provided on the Form SS-4, and that either the taxpayer or the entity must report and pay the tax. We understand that some service centers have found it helpful to mail to taxpayers a copy of Notice 97-24 as a way of educating taxpayers. Finally we agree with the Austin Service Center assigning an EIN and a Form 1041 filing requirement for the pure trust, based on the information provided on the Form SS-4.

We hope you find this information helpful. If you need further assistance, please do not hesitate to contact James Quinn at (202) 622-3060.

PAUL F. KUGLER

By: _____/S/_____
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