

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
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Telephone Number:

Refer Reply To:
CC:ITA:B06
PLR-121080-18
Date:
February 27, 2019

Legend

- Act =
- Agency =
- Court =
- Consent Decrees =
- Court Order =
- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
- Date 5 =
- Date 6 =
- Date 7 =
- Date 8 =

Date 9 =

Defendants =

Product Z =

Allocable Percentage =

Trust =

Beneficiaries =

Trustee =

State X =

State Y =

Dollar Amount A =

Dollar Amount B =

Dollar Amount C =

Dollar Amount D =

Dollar Amount E =

Dear :

This letter responds to your letter dated June 21, 2018, and subsequent correspondence submitted on behalf of the Trust, requesting certain rulings concerning the application of various sections of the Internal Revenue Code and the Income Tax Regulations to the Trust. In particular, you requested the following rulings:

1. The Trust is a qualified settlement fund under section 1.468B-1(c).
2. The Trust may exclude from its modified gross income, under section 1.468B-2(b)(1), the amount of certain funds transferred to the Trust after its establishment as a qualified settlement fund.

FACTS

The Agency filed a complaint in the Court alleging that the Defendants violated certain provisions of the Act with regard to the manufacture and design of Product Z. State X filed a separate complaint alleging that Defendants had also violated State X laws with regard to the manufacture and design of Product Z.

The Court entered Consent Decrees on Date 1 and Date 2, pursuant to which the Defendants agreed

Dollar Amount A would be used to fund projects designed to caused by the Defendants from the manufacture and design of Product Z ("Mitigation Projects"). The Allocable Percentage of Dollar Amount A would be required to be held in trust to fund Mitigation Projects for the benefit of the Beneficiaries. The remaining percentage of Dollar Amount A would be required to be held in trust to fund Mitigation Projects for the benefit of a different group of beneficiaries which are not part of this ruling. Pursuant to the Consent Decrees, as later modified by the Court Order, once the court approved the trust agreement ("Trust Agreement"), a trust (the Trust) was to be established for the Beneficiaries and a separate trust was to be established for the beneficiaries that are not a part of this ruling.

Defendants were to pay Dollar Amount A in four installments with respect to the Mitigation Projects. The first two installments were to be paid by the Defendants into the Court's registry ("Court Registry"), and after the two trusts were established, the final two installments were to be paid by the Defendants to the Trustee, who would then allocate the funds to the respective trusts in the prescribed percentages.

On Date 3 and Date 4, the Defendants deposited the first two installments (Dollar Amount B) into the Court Registry. The funds were held in the Court Registry under the Court's sole dominion and control in an interest-bearing account. Interest earned on the Dollar Amount B funds while held in the Court Registry did not reduce the Defendants' obligations to pay the total of Dollar Amount A as established in the Consent Decrees.

On Date 5, the Court Order approved the Trust Agreement and ordered the establishment of the two trusts. The Court appointed the same trustee to serve as trustee for both groups of beneficiaries. On Date 6, pursuant to the Court Order, the Trust was formed as a State Y statutory trust. At the same time, a separate trust was also formed for the benefit of the other group of beneficiaries which are not part of this ruling.

On Date 7, the Court transferred Dollar Amount B and Dollar Amount C from the Court Registry to the Trustee. Dollar Amount C represented the amount of interest earned on Dollar Amount B while held in the Court Registry from Date 3 to Date 7. The Trustee then allocated those funds to each of the two trusts in the prescribed percentages such that the Trust received the Allocable Percentage of Dollar Amount B, along with the Allocable Percentage of Dollar Amount C.

On Date 8, the Defendants transferred the third installment (Dollar Amount D) to the Trustee. The Trustee then allocated the Allocable Percentage of Dollar Amount D to the Trust.

On Date 9, the Defendants transferred the fourth and final installment (Dollar Amount E) to the Trustee, and the Trustee allocated the Allocable Percentage of Dollar Amount E to the Trust. The transfers of funds to the Trust on Date 7, Date 8 and Date 9 are referred to as the "Transfers of Funds".

Pursuant to the Trust Agreement, the Defendants retain no ownership or residual interest with respect to the portion of Dollar Amount A and investment income thereof that the Trust received. The Trust Agreement further provides that the Court will be the sole and exclusive forum for enforcing the operation of the Trust and resolving disputes related thereto.

RULINGS REQUESTED

1. The Trust is a qualified settlement fund under section 1.468B-1(c).
2. The Trust may exclude the Transfers of Funds from its modified gross income under section 1.468B-2(b)(1).

REPRESENTATIONS

The Trust represents that none of the Transfers of Funds represents dividends on stock of a transferor (or a related person), interest on debt of a transferor (or a related person), or payments in compensation for late or delayed transfers.

LAW AND ANALYSIS

1. Trust's Status as a Qualified Settlement Fund under Section 1.468B-1(c)

The first requested ruling is that the Trust is a qualified settlement fund under section 1.468B-1(c) for Federal income tax purposes.

Section 468B(g)(1) provides that "[n]othing in any provision of law shall be construed as providing that an escrow account, settlement fund, or similar fund is not subject to

current income tax.” Section 468B(g)(1) authorizes the issuance of regulations providing for the taxation of any such account or fund whether as a grantor trust or otherwise. Sections 1.468B-1 through 1.468B-5 regarding qualified settlement funds were issued pursuant to section 468B(g).

Section 1.468B-1(a) provides that a qualified settlement fund is a fund, account, or trust that satisfies the three requirements of section 1.468B-1(c). First, section 1.468B-1(c)(1) requires that the fund, account, or trust is established pursuant to an order of, or it is approved by, the United States, any state (including the District of Columbia), territory, possession, or political subdivision thereof, or any agency or instrumentality (including a court of law) of any of the foregoing and is subject to the continuing jurisdiction of that governmental authority. Second, section 1.468B-1(c)(2) requires that the fund, account, or trust is established to resolve or satisfy one or more contested or uncontested claims that have resulted or may result from an event (or related series of events) that has occurred and that has given rise to at least one claim asserting liability (i) under the Comprehensive Environmental Response, Compensation and Liability Act of 1980; (ii) arising out of a tort, breach of contract, or violation of law; or (iii) designated by the Commissioner in a revenue ruling or revenue procedure. Third, section 1.468B-1(c)(3) provides that the fund, account, or trust must be a trust under applicable state law, or its assets must be otherwise segregated from other assets of the transferor (and related persons).

Based on the facts represented by the Trust, the three requirements of section 1.468B-1(c) are satisfied, and as such, the Trust is a qualified settlement fund for Federal income tax purposes. First, the Court entered an order approving the establishment of the Trust and the Trust remains subject to the continuing jurisdiction of the Court. See section 1.468B-1(c)(1). Second, the Trust was established to resolve or satisfy claims of the Agency and State X that arose from Defendants’ violations of the Act and State X laws which have given rise to at least one claim asserting liability. See section 1.468B-1(c)(2). Third, the Trust was organized as a trust under applicable state law. See section 1.468B-1(c)(3).

2. Modified Gross Income/Transferred Funds Excluded under Section 1.468B-2(b)(1)

The second requested ruling is that the Trust may exclude the Transfers of Funds from its modified gross income under section 1.468B-2(b)(1).

Section 61(a) provides that gross income means all income from whatever source derived.

Section 1.468B-2(a) provides that a qualified settlement fund is a United States person and is subject to tax on its modified gross income for any taxable year at a rate equal to the maximum rate in effect for that taxable year under section 1(e).

Section 1.468B-2(b) provides that the term modified gross income means “gross income”, as defined in section 61, computed with certain modifications.

Under section 1.468B-2(b)(1), amounts transferred to the qualified settlement fund by, or on behalf of, a transferor to resolve or satisfy a liability for which the fund is established are excluded from gross income. However, dividends on stock of a transferor (or a related person), interest on debt of a transferor (or a related person), and payments in compensation for late or delayed transfers, are not excluded from gross income.

The Trust was established to resolve or satisfy claims of the Agency and State X that arose from the Defendants' violations of the Act and State X laws. The Transfers of Funds were made to resolve or satisfy the related liabilities. Such transfers were made by the Defendants to the Trust via the Trustee, or from the Court Registry to the Trust via the Trustee. Further, as represented by the Trust, none of the Transfers of Funds falls within the three specific exceptions to the general provision in section 1.468B-2(b)(1) that excludes transfers into the Trust from the Trust 's gross income.

Accordingly, based on the information submitted and representations made, we conclude that the Trust may exclude the Transfers of Funds from its modified gross income because the Trust may exclude such transfers from its gross income under section 1.468B-2(b)(1).

PROCEDURAL MATTERS

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.

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.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

A copy of this letter must be attached to any Federal income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer 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 rulings, it is subject to verification on examination.

Sincerely,

Roy A. Hirschhorn
Branch Chief, Branch 6
Office of Associate Chief Counsel
(Income Tax & Accounting)

cc: