

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:IT&A:1-PLR-113095-98
Date:
October 27, 1998

Legend:

Fund =

Corporation =

Law Firm =

Accountant =

Court =

x =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Dear

This responds to your request dated June 19, 1998, requesting a ruling on behalf of the Fund. Specifically, you request an extension of time under section 301.9100-3 of the Regulations on Procedure and Administration to make a "relation-back" election under section 1.468B-1(j)(2)(ii) of the Income Tax Regulations. Pursuant to our request, you submitted additional information on August 25, 1998 and September 17, 1998.

FACTS

On Date 1, 1996, the Corporation deposited \$x with an escrow agent, thereby creating the Fund. The Corporation made this transfer to the Fund in order to resolve certain class action claims against the Corporation. On Date 2, 1997, the Court entered a final order dismissing the plaintiffs' claims and approving the settlement agreement between the Corporation and the plaintiffs. The Court retains exclusive jurisdiction over the settlement agreement, including its administration, consummation, and performance, in order to determine issues relating to distributions to members of the settlement class. In addition, the Court retains exclusive jurisdiction over the Corporation, plaintiffs, and each member of the settlement class for the purpose of enabling any of them to apply to the Court at any time for further orders and directions as may be necessary or appropriate for the construction and implementation of the terms of the settlement agreement and the judgment of the Court.

The Law Firm is the administrator of the Fund. The escrow agent cannot make distributions from the Fund without the prior written authorization of the Law Firm. The Law Firm has submitted an affidavit indicating that its areas of legal practice do not include taxation. Because the Law Firm lacks tax expertise, it hired the Accountant, an accounting firm, to prepare the Fund's tax returns and otherwise assist the Fund in complying with federal and state tax requirements.

The Fund did not file a timely 1997 federal income tax return or a request for an extension of time to file the return. An affidavit provided by the Accountant indicates that the Accountant was primarily concerned with tax matters other than the Fund's federal income tax return. In particular, the Accountant was concerned with resolving employment tax and withholding issues attendant to distributions from the Fund and the preparation of state employment tax forms and federal Forms W-2 and 1099.

On Date 3, 1998, the Fund filed an untimely 1997 return. Attached to the return was a relation-back election statement signed by the Accountant and the Corporation. Subsequently, on Date 4, 1998, another relation-back election statement was prepared. The latter statement was signed by the Law Firm.

APPLICABLE LAW

Section 1.468B-1(c) of the regulations provides, in part, that a fund, account or trust is a qualified settlement fund if--

- (1) it is established pursuant to an order of, or is approved by, a court of law or other governmental authority and is subject to the continuing jurisdiction of such authority;
- (2) it 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 arising out of a tort, breach of contract, or violation of law; and

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

Section 1.468B-1(j)(1) of the regulations 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. Section 1.468B-1(j)(2)(i) provides that if a fund, account, or trust meets the requirements of paragraphs (c)(2) and (c)(3) of section 1.468B-1 prior to the time it meets the requirements of paragraph (c)(1) of that section, 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) of section 1.468B-1 or January 1 of the calendar year in which all of the requirements of paragraph (c) of section 1.468B-1 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) of the regulations provides that a relation-back election is made by attaching a copy of the election statement, signed by each transferor and the administrator, to 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) of the regulations provides 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 section 6081 of the Code.

Section 301.9100-1(c) of the regulations provides, in part, that the Commissioner has discretion to grant a reasonable extension of the time fixed by regulations for the making of an election under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

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

Under section 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 due diligence, the taxpayer was unaware of the necessity for the election;
- (iv) reasonably relied on the written advice of the Service; or
- (v) reasonably relied on a qualified tax professional, and the tax professional failed to make, or advise the taxpayer to make, the election.

Nevertheless, under section 301.9100-3(b)(3), a taxpayer will be deemed to have not acted reasonably or in good faith if the taxpayer--

- (i) seeks to alter a return position for which an accuracy-related penalty could be imposed under section 6662 at the time the taxpayer requests relief, and the new position requires a regulatory election for which relief is requested;
- (ii) was informed in all material respects 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 due date for making the election that make the election advantageous to taxpayer, the Service will not ordinarily grant relief.

Section 301.9100-3(c)(i) provides that the interests of the government will be prejudiced if, as a result of granting relief, the taxpayer's aggregate tax liability for all taxable years affected by the election will be lower than it would have been if the election had been timely made.

ANALYSIS AND CONCLUSION

Based on the information provided and the representations made, we conclude as follows:

1. The Fund is a qualified settlement fund because it satisfies the three requirements listed in section 1.468B-1(c). First, the Fund was approved by the Court

and is subject to the Court's continuing jurisdiction. Second, the Fund was established to resolve or satisfy one or more claims that have resulted from an event (or related series of events) that has occurred and that has given rise to at least one claim asserting liability arising out of violations of federal and state statutes. Third, the assets of the Fund are segregated from the other assets of the Corporation and related parties.

2. The Fund satisfies the requirement of section 1.468B-1(j)(2)(ii) of the regulations that each transferor and the administrator must sign the relation-back election statement. The relation-back election statement dated Date 3, 1998, was signed by the Corporation, the only transferor to the Fund, and the relation-back election statement dated Date 4, 1998, was signed by the Law Firm, the administrator of the Fund. The two statements may be viewed together as constituting a single statement satisfying the signature requirements of section 1.468B-1(j)(2)(ii).

3. The Fund acted reasonably and in good faith and the granting of an extension of time to make the relation-back election will not prejudice the interests of the government within the meaning of section 301.9100-3 of the regulations. Accordingly, the Fund is deemed to have made a timely relation-back election under section 1.468B-1(j)(2) of the regulations.

Except as set forth above, no opinion is expressed regarding the federal tax treatment of this transaction under any other provision of the Code.

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.

Pursuant to the Power of Attorney on file, the original of this letter is being sent to you and a copy to your representative.

Sincerely yours,

Assistant Chief Counsel
(Income Tax & Accounting)

By: _____
GEORGE J. BLAINE
Chief, Branch 1

Enclosures (2)
Copy of this letter
Copy for §6110 purposes