

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

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Person to Contact:

Identifying Number:

Telephone Number:

Refer Reply To:

CC:DOM:IT&A:2 – PLR-106149-99

Date: August 12, 1999

Legend:

Fund =
Defendant =
Plaintiffs =
Date 1 =
Date 2 =
a =
b =
c =
d =
e =

Dear _____ :

This is in response to your request for a letter ruling concerning the Fund's information reporting obligations as to the distributions described below.

FACTS

The Fund is a qualified settlement fund (QSF) as described in § 468B of the Internal Revenue Code. The Fund was created to settle numerous lawsuits brought against Defendant and others relating to Plaintiffs' investment in certain partnership interests. In the lawsuits Plaintiffs alleged, among other things, breach of fiduciary duty, breach of contract, and violation of state securities laws in connection with Defendant's offer and corresponding sale of the partnership units. For settlement purposes, the lawsuit was certified as a class-action lawsuit. Plaintiffs and Defendant entered into a settlement agreement that required Defendant's publicly traded partnership units to reach certain specified target prices within 5 years. If the partnership units failed to reach the specified target prices Defendant would be required to compensate Plaintiffs for their losses.

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Defendant failed to meet the specified target unit prices within the 5-year period and Plaintiffs and Defendant entered into an agreement for a cash distribution. The cash distribution agreement was amended, in part, by court order and was granted final approval by the court on Date 1. As part of the amended agreement, Defendant has deposited \$a in cash into the Fund in full and complete settlement of the claims of the Plaintiffs.

In addition, as part of the amended agreement, Defendant also must guarantee a rate of return to the Fund on the \$a from the date of the court order granting final approval of the amended agreement until the date that distribution is made to the Plaintiffs. The rate guaranteed is equal to the e plus 2 percent per annum. If the Fund does not earn the guaranteed rate from its investment of Fund corpus the Defendant must pay any short-fall to the Fund. Conversely, if the Fund earns more than the guaranteed rate from its investment of Fund corpus, the Fund must refund the excess to the Defendant.

For the period from Date 1 through Date 2 (the first cash distribution from the Fund), the Fund earned approximately \$b on its investment of corpus in a U.S. Treasury money market fund. The guaranteed rate would have yielded approximately \$c. As a result, the Defendant was required to pay to the Fund the difference of approximately \$d.

The \$a, plus the earnings after taxes and minus Fund expenses, will represent the total cash available for distribution to the Plaintiffs. The total cash distribution will be distributed to each Plaintiff in the ratio that the units of Defendant originally issued by Defendant to that Plaintiff bore to the units issued by Defendant to all Plaintiffs in the partnership unit sale transaction.

RULINGS REQUESTED

You have requested that we rule as follows:

- (1) The Fund distributions described above will not include a payment of interest subject to reporting on Form 1099-INT pursuant to §§ 6041 or 6049.
- (2) The Fund distributions described above are not reportable on Form 1099-MISC pursuant to § 6041; and
- (3) The Fund distributions described above are not reportable on Form 1099-B pursuant to § 6045.

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LAW AND ANALYSIS

Sections 6041, 6045, and 6049 require the filing of information returns with the Internal Revenue Service under specified circumstances. Section 1.468B-2(l)(2)(i) of the Income Tax Regulations provides that payments and distributions made by a QSF are subject to those and other information reporting requirements.

Section 1.468B-4 states that the determination whether a distribution to a claimant is includible in the claimant's gross income is generally made by reference to the claim in respect of which the distribution is made and as if the distribution were made directly by the transferor. For example, to the extent a distribution is in satisfaction of a claim for forgone taxable interest, the distribution is includible in the claimant's gross income.

Section 6045(a) provides generally that persons doing business as brokers shall, when required by regulations, report gross proceeds and other information. Section 1.6045-1(a)(1) defines the word "broker" to mean a person that, in the ordinary course of a trade or business, stands ready to effect sales by others. Section 1.6045-1(c)(2) provides generally that a broker shall make an information return for each such sale effected by the broker in the ordinary course of the broker's trade or business. Partnership interests are securities under § 1.6045-1(a)(3)(iii). Section 1.6045-1(a)(9) defines a "sale" as being any disposition of securities, commodities, regulated futures contracts, or forward contracts for cash, and as including redemptions of stock, retirements of indebtedness, and entering into short sales.

Section 6049(a) requires every person who makes payments of interest (as defined in § 6049(b)) aggregating \$10 or more to any person during a calendar year to file an information return. Section 6049(b)(1)(A) defines "interest" as including interest on any obligation issued in registered form, or of a type offered to the public, other than any obligation with a maturity (at issue) of not more than 1 year held by a corporation. Section 6049(b)(1)(E) further defines "interest" as including interest on deposits with brokers (as defined in § 6045).

Section 6041(a) requires all persons engaged in a trade or business and making payment in the course of such trade or business to another person of fixed or determinable gains, profits, and income (other than payments to which §§ 6045 and 6049(a) (among others) apply), of \$600 or more in any taxable year to file an information return with respect to such payments.

Section 1.6041-1(a)(1)(ii) states that, except as provided in § 1.6041-3, every person engaged in a trade or business shall make an information return for each calendar year with respect to payments made in the course of a trade or business to another person of fixed or determinable interest, rents, royalties, annuities, pensions, and other gains, profits, and income aggregating \$600 or more. However, the payments shall not include payments for which statements are required under §§ 6045 or 6049(a) (among

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others). Further, § 1.6041-3(b) provides that brokers who make payments to customers are not subject to the reporting requirements of §§ 6041 and 1.6041-1. Rather, payments by brokers are covered by § 6045.

Section 1.6041-1(c) defines “fixed or determinable income.” Income is fixed when it is paid in amounts definitely predetermined, and is determinable whenever there is a basis of calculation by which the amount of gain or profit to be paid may be ascertained.

A. Reporting under § 6045

Section 1.468B-2(l)(2)(ii) requires a QSF to file an information return on a distribution to a claimant if a transferor to the QSF would be required to file an information return if it had made the payment directly to the claimant. A broker is required by § 6045 and its regulations to report gross proceeds from the sale of securities. The Fund acknowledges that partnership interests qualify as securities and that Defendant qualifies as a broker under § 6045.

Distributions by the Fund are not of gross proceeds from sales under § 6045. The distributions were made not as a result of a sale or disposition, but rather in accordance with the settlement agreement that related to a claim for damages made by the Plaintiffs resulting from acquisition of partnership units in exchange for the assets of participating partnerships and the failure of the Plaintiffs to attain specified market price targets with respect to their acquired partnership units. Had the Defendant made the subject distributions directly to the Plaintiffs, the Defendant would not have been required to file information returns under § 6045. Accordingly, the Fund has no reporting obligation under § 6045.

B. Reporting under § 6049

If the distributions made by the Fund to the Plaintiffs are interest within the meaning of § 6049(b)(1)(A) or (b)(1)(E), the Fund would be required, pursuant to § 6049(a) and § 1.468B-2(l)(2)(ii), to file information returns as to any Plaintiff whose distribution, during the calendar year, was for \$10 or more. In this case, however, the Fund's distributions were not interest under § 6049(b)(1)(A) or (b)(1)(E).

The claims and distributions related neither to registered obligations (under § 6049(b)(1)(A)) nor to deposits made with brokers (under § 6049(b)(1)(E)). Rather, the claims and distributions related to a claim for damages made by the plaintiffs resulting from the acquisition of partnership units in exchange for the assets of participating partnerships and the failure of the Plaintiffs to attain specified market price targets with respect to their acquired partnership units. Further, the distributions are not interest under any other provision of § 6049. Accordingly, the Fund has no reporting obligation under § 6049.

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C. Reporting under § 6041

Pursuant to § 6041, a person engaged in a trade or business generally is required to report payments of fixed or determinable gains, profits, and income of \$600 or more made in that trade or business. The Fund believes that it has no reporting obligation pursuant to § 6041 and § 1.468B-2(l)(2)(ii), because the amounts distributed, though known, are not "fixed or determinable gains, profits, and income" within the meaning of § 6041. We agree with the Fund with respect to the distribution of principal, \$a, from the Fund and decline to rule with respect to the distribution of the Fund's net investment income.

Rev. Rul. 80-22, 1980-1 C.B. 286, clarifying Rev. Rul. 78-110, 1978-1 C.B. 390, amplified by Rev. Rul. 82-93, 1982-1 C.B. 196, considers whether a casualty insurance company, having been notified that a farmer had capitalized expenses related to the crops, was required to file information returns under § 6041. The ruling ruling notes that the capitalization of expenses will establish the farmer's basis in the destroyed crops and that determining whether any insurance proceeds paid to farmers constituted gains, profits, or income to the farmers depended on the farmer's basis in the crops. Because the insurance company could not require the farmers to disclose their bases in their destroyed crops, the amount of gains, profits, or income, if any, resulting from the crop insurance proceeds was not fixed or determinable by the insurance company. The revenue ruling accordingly holds that if the farmers (1) capitalized expenses relating to the crops, and (2) notified the insurance company of that fact, the company had no § 6041 reporting requirement as to the insurance proceeds.

The Fund will not know the amount of the Plaintiffs' adjusted basis in their partnership interests because the Fund does not know (and cannot require the Plaintiffs to disclose) what items of income, deduction, loss, or credit have flowed through the various partnerships to them nor, as to those Plaintiffs who sold their partnership interests, the amount realized on the sale. In the absence of such information the Fund cannot ascertain the extent, if any, to which its distributions of Fund corpus, \$a, constitute gains, profits, or income to the Plaintiffs. Because distributions of Fund corpus to the Plaintiffs are not fixed or determinable gains, profits, or income, the Fund has no reporting obligation under § 6041.

However, due to the factual nature of the request we are unable to determine the character of the distribution of the Fund's net investment income. Because we cannot determine the character of the distribution from the facts submitted, we cannot determine whether the distribution is of fixed or determinable income under § 6041. Thus, we decline to rule regarding the Fund's information reporting obligation for distributions of net investment income. See section 7.01 of Rev. Proc. 99-1, 1999-1 I.R.B. 6.

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Caveats:

A copy of this letter must be attached to any income tax return to which it is relevant. 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) provides that it may not be used or cited as precedent.

Sincerely,

Assistant Chief Counsel
(Income Tax & Accounting)

By _____
Robert A. Berkovsky
Chief, Branch 2

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

▷ Moorman Litigation Settlement Fund
c/o The Garden City Group, Inc.
Claims Administrator
P.O. Box 9388
Garden City, NY 11520-9388

Person to Contact:

Eric J. Lucas

Identifying Number:

50-12470

Telephone Number:

(202) 622-

Refer Reply To:

CC:DOM:IT&A:2 – PLR-106149-99

Date:

Dear Mr. Buchband:

The enclosed copy of a letter ruling is sent to you under the provisions of a Power of Attorney and Declaration of Representative, or other proper authorization, currently on file with the Internal Revenue Service. 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.

Sincerely,

Assistant Chief Counsel
(Income Tax & Accounting)

By _____
Robert A. Berkovsky
Chief, Branch 2