

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:ITA:4 – PLR-150581-03

Date:

May 06, 2004

Taxpayer =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =

Date 10 =

Date 11 =

A =

B =

C =

D =

E =

\$ V =

\$ W =

\$ X =

\$ Y =

\$ Z =

Dear _____ :

This letter is in response to your request for a ruling that \$Z of interest income earned on certain funds while under the dominion and control of the U.S. Marshals Service is not income to Taxpayer under § 61 of the Internal Revenue Code.

FACTS

Taxpayer is a federal receivership. Between Date 1 and Date 2 certain individuals and related entities operated three management and assets services and investment companies (collectively referred to as A). Through A, various bank accounts were opened and numerous individuals and other entities invested substantial sums of money that were deposited into these accounts in the name of A. The investment scheme purported to invest the money in B that promised to pay an exaggerated rate of return. As a result of an undercover federal criminal investigation into the alleged investment operations of A, the Federal Bureau of Investigation (FBI) concluded that the investment scheme of A was nothing more than an illegal Ponzi investment scheme, and did not attempt or succeed in investing monies and earnings as promised. On Date 3, the FBI obtained a seizure warrant from a U.S. district court based on information presented in a sealed affidavit and other information known to federal authorities that there was probable cause to believe that A had committed certain crimes, including mail and wire fraud and money laundering from a large-scale Ponzi investment scheme.

Pursuant to the seizure warrant, on Date 4, the FBI seized approximately \$V from an account in A's name on deposit at C, and placed the funds in the federal Seized Assets Forfeiture Fund under Case Number D under the sole custody and control of the U.S. Marshals Service. The FBI continued its investigation of A and under additional seizure warrants, seized \$W on Date 5 and \$X on Date 6. These funds were also placed in the federal Seized Assets Forfeiture Fund under Case Number D under the sole custody and control of the U.S. Marshals Service. According to the United States Attorney, there was probable cause to believe that the seized assets were subject to forfeiture as proceeds of mail and wire fraud and money laundering from a large-scale Ponzi investment scheme. See 18 U.S.C. § 981. Under 18 U.S.C. § 981(f), all right, title, and interest in property seized under 18 U.S.C. § 981 vests in the United States upon the commission of the act giving rise to the forfeiture.

On Date 7, two of the individual investors, victimized by the Ponzi scheme, filed a lawsuit in E against the United States and certain federal officials for the return of their share of the money seized by the government. The victims claim that they are entitled to their investments under federal law and the Constitution.

On Date 8, the U.S Attorney's office filed a motion to appoint an interim receiver for the seized funds primarily for the purpose of returning the funds to the victims of the illegal

Ponzi investment scheme.¹ On Date 9, the court appointed you as receiver for the seized funds. You are charged with identifying victims, reviewing claims for restitution of seized funds, submitting evidence regarding the claims to the court, and receiving and distributing all or part of the seized funds.

Between Date 10 and Date 11, the U.S. Marshals Service delivered to you approximately \$Y, including approximately \$Z in interest earned on \$Y while in the sole custody and control of the U.S. Marshals Service from Date 4 to Date 11.

RULING REQUESTED

You request a ruling that the \$Z of interest income earned on the seized assets while in the dominion and control of the U.S. Marshals Service is not income to Taxpayer under § 61.

ANALYSIS AND DISCUSSION OF APPLICABLE LAW

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

Section 468B(g) 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. The Secretary shall prescribe regulations providing for taxation of any such account or fund whether as a grantor trust or otherwise.” Pursuant to such authority, the Secretary has published §§ 1.468B-1 through 1.468B-5 of the Income Tax Regulations regarding qualified settlement funds (QSFs).

Under § 1.468B-1(a) and (c), a fund, account, or trust is a qualified settlement fund if (1) it is established pursuant to an order of, or 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; (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 arising out of a tort, breach of contract, or violation of law; 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).

¹ 18 U.S.C. § 981(e)(6) states that “[n]otwithstanding any other provision of the law ... the Attorney General ... is authorized to retain property forfeited pursuant to this section, or to transfer such property on such terms and conditions as he may determine ... as restoration to any victim of the offense giving rise to the forfeiture, including in the case of a money laundering offense, any offense constituting the underlying specified unlawful activity.”

Under § 1.468B-1(j)(1), if a fund, account, or trust is established to resolve or satisfy claims described in § 1.468B-1(c)(2), the assets of the fund, account, or trust are treated as owned by the transferor of those assets until the fund, account, or trust also meets the requirements of § 1.468B-1(c)(1) and (c)(3). On the date the fund, account, or trust satisfies all the requirements of § 1.468B-1(c), the transferor is treated as transferring the assets to a qualified settlement fund.

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 § 1(e).

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

Under § 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.

Under § 1.468B-2(k)(2), a qualified settlement fund is in existence for the period that (i) begins on the first date on which the fund is treated as a qualified settlement fund under § 1.468B-1; and (ii) ends on the earlier of the date the fund (A) no longer satisfies the requirements of § 1.468B-1; or (B) no longer has any assets and will not receive any more transfers.

On Date 9, Taxpayer met the first and second requirements of § 1.468B-1(c) when the district court entered an order approving the establishment of Receiver for the purpose of resolving or satisfying the claims of the victims of the alleged Ponzi scheme. On Date 10, Taxpayer met the third requirement of § 1.468B-1(c), when the transferor (United States) began transferring assets to Taxpayer. Therefore, on Date 10 Taxpayer became a qualified settlement fund under § 1.468B-1. In addition, all amounts transferred by the U.S. Marshals Service (including the \$Z of interest earned on \$Y while under the dominion and control of the U.S. Marshals) were transferred to resolve or satisfy the claims of the victims and none of such amounts represent compensation for late or delayed transfers. Thus, under § 1.468B-2(b)(1), Taxpayer excludes from gross income all amounts transferred to it by the U.S. Marshals Service.

Accordingly, based strictly on the information submitted and representations made, we conclude that Taxpayer excludes from its modified gross income under § 1.468B-2(b)(1) the \$Z of interest income earned on the seized assets while in the dominion and control of the U.S. Marshals Service.

We express no opinion concerning the tax treatment of the interest income earned on the seized funds while under the dominion and control of the U.S. Marshals Service, or the tax consequences to you or Taxpayer under § 6901 regarding transferees and fiduciaries.

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 representative. 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 showing the deletions proposed to be made when it is disclosed under § 6110.

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,

Michael J. Montemurro
Senior Technician Reviewer
Office of Associate Chief Counsel

(Income Tax & Accounting)