



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

December 15, 2000

Number: **200104030**
Release Date: 1/26/2001
UIL No. 468B.02-00

CC:PA:APJP:1:EKaye
GL-808387-00

MEMORANDUM FOR M.K. MORTENSEN
ASSOCIATE AREA COUNSEL
CC:SB:5:SLC
Attn: Mark H. Howard

FROM: Blaise G. Dusenberry, Acting Senior Technician Reviewer
CC:PA:APJP:1

SUBJECT:

Legend:

W =

J =

K =

A =

B =

Z Office =

year 1 =

year 2 =

date 1 =

date 2 =

X =

Y =

This memorandum responds to your request for assistance, dated September 29, 2000, regarding a federal receivership established by Judge in a criminal case entitled W. Specifically, you have asked whether the receiver appointed in this case must file

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income tax returns for closely held corporations that owned prior to K creating the receivership.

FACTS:

The Z Office initiated the criminal case in as a result of inquiries to the FBI and the SEC from the X government. A and B, an X citizen, claimed to operate a stock brokerage firm through several different entities. However, they were not complying with securities regulations, and in year 1, the Z Office handed down a criminal indictment against them and began forfeiture proceedings.

On date 1, the court overseeing the proceedings ordered, in accordance with a stipulation of the promoters, that the seized property should be delivered to the investors as restitution under a plan to be set forth in a subsequent stipulation of the parties. Pending the distribution, the court ordered Y to retain possession of the property.

Eventually, the administration of the property by the Z Office became too burdensome. Accordingly, the Z Office asked the court to appoint a receiver to manage the seized assets, the ultimate goal being liquidation and restitution to the X investors. On date 2, the court ordered Y to turn over all properties to the receiver. The court subjected the property in the receivership to the jurisdiction of the court, encumbered the property via judicial lien, and ordered the receiver to prepare an accounting of the receivership.

The Service's position regarding the fund held by the Z Office and the receiver is that it is a Qualified Settlement Fund ("QSF"). This classification became effective date 2, the date the court established the receivership.

LAW:

Section 468B(b)(5) of the Internal Revenue Code ("Code") provides that for the purposes of subtitle F, a designated settlement fund shall be treated as a corporation, and any tax imposed by this subsection shall be treated as a tax imposed by section 11.

Section 468B-2(k)(1) of the Income Tax Regulations provides that a QSF must file an income tax return with respect to the tax imposed under section 468B of the Code for each taxable year that the fund is in existence, whether or not the fund has gross income for that taxable year.

Section 468B-2(k)(3) provides that the income tax return of the QSF must be filed on or before March 15 of the year following the close of the taxable year of the QSF unless the fund is granted an extension of time for filing under section 6081. The return must be made by the administrator of the QSF.

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Section 468B-2(k)(3)(i) provides that the “administrator” of a QSF is the person designated, or approved, by the governmental authority that ordered or approved the fund for purposes of section 1.468B-1(c)(1).

ANALYSIS:

On date 2, the court created the receivership in this case by ordering Y to turn over all properties it held to the receiver. The receivership, according to the Service, is a QSF as of that date (date 2) because it meets the requirements of a QSF under section 1.468B-1 of the regulations.

Under the Code and regulations, a QSF must file an income tax return for each taxable year the fund is in existence, whether or not the fund has gross income for that taxable year. According to the facts, the fund has been in existence since year 2. As such, the QSF must file an income tax return, beginning with the year 2 taxable year, for each taxable year the QSF remains in existence.

The person responsible for filing the income tax return of the QSF, according to the regulations, is the “administrator” of the QSF. Here, the “administrator” is the receiver appointed by the court. Accordingly, the court-appointed receiver must file the income tax returns for the QSF for each taxable year the QSF remains in existence.

CONCLUSION:

The QSF must file an income tax return, beginning with the year 2 taxable year, for each taxable year the QSF remains in existence. The court-appointed receiver is the person who must file the income tax returns for the QSF for each of these years.

Should you have further questions regarding this matter, please contact Elizabeth Kaye at (202) 622-4910.