

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Person To Contact:

, ID No.

Telephone Number:

In Re:

Refer Reply To:

CC:ITA:B06 – PLR-130439-03

Date:

September 10, 2003

Company =
State A =
State B =
Year 1 =
Date 1 =
Date 2 =
Date 3 =
Date 4 =
Date 5 =

Dear :

This is in reply to a request for ruling dated April 15, 2003, concerning the creation of a trust that will be established to satisfy certain asbestos-related personal injury claims brought against Company, and established pursuant to a plan of reorganization under chapter 11 of the Bankruptcy Code. Specifically, you have requested a ruling that as of the effective date of the trust agreement establishing a trust (hereinafter the “successor trust”) under the laws of State A, the successor trust will be a qualified settlement fund under section 1.468B-1(c) of the Income Tax Regulations.

FACTS

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Company is a closely-held business incorporated and headquartered in State A with offices and warehouses located throughout State A and in State B. Company operates as a specialty contractor engaged in the sale, installation, maintenance, repair, removal and handling of refractory and acid masonry linings and related products in industrial settings. Company, through its subsidiaries and divisions, also has engaged in the sale, fabrication, installation, maintenance, repair, and removal or handling of thermal insulations. Prior to the mid-Year 1, many of the products handled by Company contained asbestos. Neither Company nor its subsidiaries or divisions has ever manufactured insulation or refractory products. Nonetheless, as a result of Company's activities involving asbestos-related products, Company is facing tens of thousands of contested and uncontested tort claims by individuals claiming to have suffered bodily injury as a result of being exposed to the asbestos-related products.

Company has a substantial amount of insurance coverage with which to pay asbestos claims. Many of the claims have been settled pursuant to multiple individual claimant agreements and a single settlement agreement entered into on Date 1. The single settlement agreement covers various participating asbestos claimants who did not enter into individual claimant agreements. On Date 2, Company executed a collateral trust agreement and security agreement. The collateral trust agreement created a collateral trust that was formed to hold a security interest in and administer Company's insurance coverage proceeds available to satisfy all of the claims of the asbestos claimants under the multiple individual claimant agreements and the single settlement agreement. In addition to satisfying the claims of the asbestos claimants, the trust assets (*i.e.*, the insurance coverage proceeds) will also be used to reimburse Company for certain transaction costs incurred by Company and/or a related person in connection with settling all of the asbestos-related claims and the chapter 11 reorganization. Under the security agreement, Company assigned to the trustee of the collateral trust a continuing security interest in Company's insurance coverage and the proceeds of that coverage for asbestos-related bodily injury claims. The security agreement is for the benefit of the asbestos claimants, and therefore, Company retained and did not assign a security interest in an amount of its insurance coverage and the proceeds of that coverage equal to the reimbursable transaction costs, and other related amounts.

On Date 3, Company filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code, along with its plan of reorganization. Company's plan of reorganization requires the establishment of the successor trust that will be responsible for satisfying all of the asbestos claims of Company. The successor trust will be established as a trust under the laws of State A. Under the plan, once the successor trust becomes effective the collateral trust will transfer all of its rights and assets to the successor trust and terminate. The successor trust will assume and be solely responsible for all of the asbestos claims of Company. The successor trust will be

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responsible for all trust expenses, including administrative costs and legal, accounting and other professional fees incurred in connection with its purposes and activities. The successor trust also will reimburse legal counsel for certain asbestos claimants to the extent not reimbursed by the collateral trust, indemnify Company (and related persons) for any expenses, costs and fees, judgments, settlements or other liabilities arising from or incurred in connection with any action related to an asbestos claim, and reimburse Company (and/or related persons) for transaction and similar costs. The plan provides that the successor trust will become effective upon receipt of a private letter ruling holding that the successor trust is a qualified settlement fund under section 1.468B-1(c). On Date 4, the bankruptcy court issued an order confirming Company's plan of reorganization, which establishes the successor trust. On Date 5, the bankruptcy court issued a confirmation order requiring that when formed the successor trust will be under that court's continuing jurisdiction.

Company represents that the successor trust was formed for the purpose of facilitating Company's bankruptcy and settlement and payment of the asbestos claims brought against it. Company further represents that by utilizing the successor trust as a separate legal entity Company will be able to assign certain assets to the successor trust in order to satisfy the asbestos claims. Because of the injunction issued by the bankruptcy court, Company's liabilities for the asbestos claims will be assumed by the successor trust and, as a result, barred as against Company. Finally, Company represents that the successor trust will enable Company to reorganize and emerge from bankruptcy free from the asbestos claims.

APPLICABLE LAW

Section 1.468B-1(a) provides that a qualified settlement fund is a fund, account, or trust that satisfies the following requirements of section 1.468B-1(c):

(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 asserting liability--

(i) under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA); or

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(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; and

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

Section 1.468B-1(e) provides that a fund, account, or trust is “ordered by” or “approved by” a governmental authority described in section 1.468B-1(c) when the authority issues its initial or preliminary order to establish, or grant its initial or preliminary approval of, the fund, account, or trust, even if that order or approval may be subject to review or revision.

Section 1.468B-1(h)(2) provides that if a fund, account, or trust is established to resolve or satisfy claims described in section 1.468-1(c)(2) as well as other types of claims (*i.e.*, non-allowable claims) arising from the same event or related series of events, the fund is a qualified settlement fund. However, under section 1.468B-3(c), economic performance does not occur with respect to transfers to the qualified settlement fund for non-allowable claims.

RULING

Based solely on the information provided and representations made, we rule that the successor trust, once effective, will be a qualified settlement fund under section 1.468B-1(c) because the three requirements of that section are satisfied. First, the successor trust is established pursuant to an order of the bankruptcy court and is subject to that court’s continuing jurisdiction. Second, the successor trust is established to resolve or satisfy one or more contested or uncontested claims that have resulted or may result from a related series of events (*i.e.*, the sale, installation, maintenance, repair, removal and handling of refractory and acid masonry linings and related products containing asbestos) and that have given rise to at least one claim asserting tort liability for personal injury or death. Third, the trust is a trust under the laws of State A. The fact that the successor trust will be used to pay certain non-allowable claims (*i.e.*, legal fees for certain claimants, reimbursable transaction costs, indemnity payments, and similar costs discussed hereinabove) does not invalidate its status as a qualified settlement fund because such non-allowable claims arise from the same related series of events.

Except as specifically set forth above, no opinion is expressed regarding the federal tax treatment of this transaction. In particular, no opinion is expressed or

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implied regarding the taxation of the successor trust under section 1.468B-2, and the tax treatment applicable to Company under section 1.468B-3.

This ruling is directly only to the taxpayer who requested it. Section 6110(j)(3) of the Internal Revenue Code provides that it may not be used or cited as precedent.

Sincerely,

Thomas A. Luxner
Branch Chief
Office of Associate Chief Counsel (Income
Tax and Accounting)

cc: