

## Internal Revenue Service

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Department of the Treasury  
Washington, DC 20224

Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:ITA:B07  
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Date:  
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### Legend

Fund =  
Agency =  
Court =  
X =  
Area Z =

Administrator =  
Escrow Agent =  
\$y =  
Date a =  
Date b =  
Date c =  
Date d =  
Date e =  
Date f =  
Date g =

Dear :

This letter responds to your request dated December 1, 2006, requesting a ruling on behalf of the Fund. Specifically, you request an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to make a “relation-back” election under § 1.468B-1(j)(2)(ii) of the Income Tax Regulations.

### FACTS

On Date a, the United States of America, on behalf of Agency, filed a complaint with the Court alleging that X was responsible for contamination at Area Z and requesting damages and other environmental remediation costs. Also on Date a, the United States lodged a consent decree with the Court in which the parties agreed to resolve X's alleged liability by X's deposit of \$y into an escrow account to be used to pay for environmental remediation work at Area Z.

The consent decree included a copy of an escrow agreement, executed in Date b between the United States, X, the Administrator, and the Escrow Agent, that provided for the management of Fund. On Date c, X contributed \$y in cash to the Fund. An Amended Agreement was executed on Date d. On Date e, the Court entered an order approving the consent decree.

In Date f, the Administrator prepared the Fund's federal income tax return, which included a relation-back election, before the due date for the return. On Date g, after the due date for the return had passed and after the Administrator discovered that it had inadvertently failed to timely file the Fund's federal income tax return and accompanying relation-back election, the Administrator filed the Fund's income tax return and the relation-back election. Date g is before the date that the Fund's income tax return would have been due had the Fund requested and been granted an extension of time to file its income tax return under § 6081. The Fund has represented that it has requested relief to extend the period of time for making the relation-back election before its failure to make a timely relation-back election was discovered by the Internal Revenue Service.

## LAW AND ANALYSIS

Section 1.468B-1(a) provides that a qualified settlement fund is a fund, account, or trust that satisfies all three requirements of § 1.468B-1(c). First, § 1.468B-1(c)(1) requires that the fund, account, or trust 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. Second, § 1.468B-1(c)(2) requires that the fund, account, or trust 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; (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. Third, § 1.468B-1(c)(3) provides that the fund, account, or trust must be a trust under applicable state law, or its assets must be otherwise segregated from other assets of the transferor (and related persons).

Section 1.468B-1(j)(1) provides, in part, that 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-1(j)(2)(i) provides that if a fund, account, or trust meets the requirements of paragraphs (c)(2) and (c)(3) of § 1.468B-1 prior to the time it meets the requirements of paragraph (c)(1), the transferor and 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) or January 1 of the calendar year in which all the requirements of paragraph (c) 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) states that a relation-back election is made by attaching a copy of the election statement, signed by each transferor and the administrator, to (and as part of) 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) states that the income tax return of the 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 as extension of time for filing under § 6081 of the Internal Revenue Code.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I. Section 301.9100-1(d) defines the term “regulatory election” as including an election the due date of which is prescribed by a regulation, revenue ruling, revenue procedure, notice, or announcement.

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

Section 301.9100-3(b)(1) provides that 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 reasonable 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.

Section 301.9100-3(b)(3) provides, however, that a taxpayer is deemed to have not acted reasonably and in good faith if the taxpayer (i) seeks to alter a return position for which an accuracy-related penalty could be imposed under § 6662 at the time the taxpayer requests relief and the new position requires or permits a regulatory election for which relief is requested, (ii) was fully informed of the required election and related tax consequences, but chose not to file the election, or (iii) uses hindsight in requesting relief.

Section 301.9100-3(c)(1)(i) provides that the interests of the Government are prejudiced if granting relief would result in a taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made (taking into account the time value of money). Similarly, if the tax consequences of more than one taxpayer are affected by the election, the Government's interests are prejudiced if extending the time for making the election may result in the affected taxpayers, in the aggregate, having a lower tax liability than if the election had been timely made. Furthermore, § 301.9100-3(c)(1)(ii) provides that the interests of the government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made or any taxable years that would have been affected by the election had it been timely made are closed by the statute of limitations before the taxpayer's receipt of a ruling granting relief under this section.

Based on the information provided and the representations made, we conclude that the Fund acted reasonably and in good faith, and that granting an extension of time to make the relation-back election will not prejudice the interests of the Government. Accordingly, the Fund is granted an extension of time until Date g, the date on which the Fund's income tax return was filed with the Service, to make the relation-back election under § 1.468B-1(j)(2).

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. Specifically, we express no opinion as to whether the Fund is a qualified settlement fund within the meaning of § 1.468B-1(c) or whether the relation-back election is otherwise valid under § 1.468B-1(j)(2).

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.

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.

Sincerely,

George B. Baker  
Branch Chief, Branch 7  
(Income Tax & Accounting)