

**Office of Chief Counsel
Internal Revenue Service
Memorandum**

Number: **201112008**

Release Date: 3/25/2011

CC:ITA:B04:FWIII
PRES-134500-10

Third Party Communication: None
Date of Communication: Not Applicable

UILC: 61.00-00, 6041.00-00, 6050P.00-00

date: December 14, 2010

to: David Alito
(Acting Director, Compliance (W&I))

from: Michael J. Montemurro
Branch Chief, Branch 4
(Income Tax & Accounting)

subject: Payments to Settle Allegations of Unfair Lending Practices

LEGEND

Company =
Bank =
Loans =
Borrowers =

Assets =
State =
Settlement =
\$x =

This Chief Counsel Advice addresses an issue under your jurisdiction. It may not be used or cited as precedent. We understand you will share this advice with Operating Division field personnel.

Company provided funding to Bank to finance Loans to Borrowers. Borrowers used the proceeds of Loans to finance Assets, and the Assets secured Borrowers' obligations under the Loans. State investigated the activities of Company in financing the Loans and alleged that Company had engaged in unfair lending practices under State law. To avoid further investigation and possible legal action by State, Company entered into Settlement with State.

The Settlement states that Company enabled Bank to make unfair Loans with principal amounts in excess of the principal amount that Borrowers would have obtained in the absence of the unfair lending practices. The Company agreed to pay \$x to an independent trustee of a settlement fund. The trustee will make payments to a Loan holder and/or servicer of a Borrower's Loan to reduce the amount a Borrower will repay on a Loan.

The Settlement has the effect of equitably reforming the Loans by adjusting the principal amounts to the amounts that the Borrowers would have obtained in the absence of the unfair lending practices. The trustee's payments to the Loan holders and/or servicers do not result in an accession to wealth to Borrowers. Consequently, the payments are not gross income to Borrowers under § 61 of the Internal Revenue Code (including § 61(a)(12)) and are not subject to information reporting requirements under § 6041 or § 6050P.

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

Please call Frank Dunham or me at (202)622-4920 if you have any questions.

cc: Monica Baker
SB/SE Examination