

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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, ID No.

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Refer Reply To:
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February 07, 2017

LEGEND

Fund =
Promoter =
Entity 1 =
Scheme =
Money Transmitter =
Agency 1 =
Agency 2 =
Court 1 =

Court 2 =

Date 1 =
Date 2 =
Date 3 =
Date 4 =
Date 5 =
Date 6 =
Date 7 =
Date 8 =
Date 9 =
Date 10 =
Date 11 =
Date 12 =
Date 13 =
Dollar Amount A =

Dollar Amount B =
Dollar Amount C =

Dear :

This letter responds to your letter dated August 17, 2016, submitted on behalf of the Fund, requesting a private letter ruling concerning the application of § 468B of the Internal Revenue Code to the Fund. In particular, you requested a ruling whether the Fund may exclude from its modified gross income, under § 1.468B-2(b)(1), the amount of certain seized funds received from Agency 2.

FACTS

The Fund is a federal receivership that arose as a result of an illegal Ponzi investment scheme operated by Promoter through Entity 1 and other related entities (collectively referred to as the “Entities”). By Date 1, Promoter began offering and selling unregistered interests in a pooled investment arrangement known as the Scheme, promising thousands of investors inflated rates of returns. Interests in the Scheme were offered to investors primarily through the Scheme website, which the Promoter controlled.

To invest in the Scheme, an investor completed a membership form on the Scheme website, chose an investment option, and set up an account with an electronic currency (“e-currency”) provider. The investor would then deposit money with the e-currency provider via either a credit card transaction or wire transfer into their account with the e-currency provider. The e-currency provider, in turn, transferred equivalent sums via the internet to accounts of the e-currency provider controlled by Promoter. Promoter maintained and controlled e-currency accounts in his name and in the names of the Entities. The Promoter and the Entities did not maintain separate accounts for each investor, but rather pooled the investors’ funds in the e-currency accounts that Promoter controlled.

Almost all of the transfers of funds between investors and the Entities were made through web-based e-currency providers. The predominant e-currency provider used in the Scheme was Money Transmitter, which was operated by an individual unrelated to Promoter and the Entities. Promoter and the Entities used Money Transmitter to hold, receive and distribute funds from and to Scheme investors, and also to make investments, the profitability and extent of which the Promoter misrepresented to investors. By using Money Transmitter in the Scheme, Promoter and the Entities were able to collect millions of dollars of e-currency from investors while remaining virtually anonymous.

From Date 1 through Date 2, Promoter raised approximately Dollar Amount A from investors. The Scheme experienced early investment losses, and Promoter (and certain other individuals) misappropriated investor funds for their personal use. Beginning in Date 3, Promoter stopped returning funds to investors who sought to withdraw from the Scheme. By Date 4, Promoter stopped accepting investor funds through e-currency providers. By Date 5, the Scheme website was taken down.

On Date 6, Agency 1 filed a civil enforcement action in Court 1 against Promoter, the Entities, and certain other individuals, alleging violations of federal securities laws. Also on Date 6, Court 1 issued an Order ("Order 1"), appointing a receiver (the "Receiver") as receiver for the estate of Promoter and the Entities (collectively, the "Receiver Estates"). In Order 1, Court 1 authorized the Receiver to, among other things: (1) take custody, control and possession of any and all property under the direct and indirect control of the Receiver Estates; (2) manage, control and maintain the Receiver Estates; and (3) have full power to sue for and collect, recover, receive and take into possession all types of property of the Receiver Estates. In more general terms, the Receiver was charged by Court 1 with the duties of identifying victims of the Scheme, reviewing investor claims for restitution of funds, recovering funds wherever the funds may be located (whether or not the funds had been seized), and distributing recovered funds to investors.

Soon after the Scheme started to collapse, the Money Transmitter also began to collapse. On Date 7, the Money Transmitter website was taken down. This resulted in money transfer customers and depositors (including the Promoter, the Entities, and investors) being unable to access their funds held by the Money Transmitter.

On Date 8, Agency 2 filed a civil forfeiture action under 18 U.S.C. 981(a) in Court 2 against Money Transmitter's assets, alleging multiple violations of federal laws, including operating an unlicensed money transmitting business, wire fraud and mail fraud (the "Forfeiture Action"). Pursuant to the foregoing action, Agency 2 seized Dollar Amount B of Money Transmitter's funds held in the United States, placing the funds in the custody of Agency 2 (the "Remission Fund"). In Date 9, Agency 2 instituted a remission process administered by a third-party (the "Remission Fund Administrator"), to return seized funds to victims of multiple fraudulent investment schemes that used Money Transmitter, including the Scheme. On Date 10 and Date 11, the Receiver filed claims on behalf of the Receiver Estates and the Scheme's investors relating to funds in the Remission Fund, seeking to recover amounts previously held by Money Transmitter that were deposited by the Promoter, the Entities and the Scheme's investors.

With respect to the Forfeiture Action, on Date 12, Court 1 issued an order ("Order 2") which further specified the Receiver's original powers to include the authority "to receive and collect any remission or restoration of forfeited funds recoverable by or payable to Scheme investors pursuant to any civil or criminal forfeiture action brought by the United States in any federal jurisdiction."

Agency 2 adopted the Remission Administrator's recommendation that the Receiver's claims be allowed in full. On Date 13, the Remission Fund Administrator, as agent for Agency 2, transferred a check to the Receiver in the amount of Dollar Amount C (the "Remission Recovery"). Receiver has used and will continue to use the funds to settle or resolve allowable investor claims related to the Scheme. Prior to receiving the Remission Recovery, Receiver had recovered amounts from other sources relating to the Receiver Estates. With Court 1's approval, Receiver has made two interim distributions to investors in proportion to the investors' allowed claim amounts.

REPRESENTATIONS

The Fund represents that it constitutes a qualified settlement fund under § 1.468B-1.

The Fund represents that none of the Remission Recovery represents dividends on stock of a transferor (or a related person), interest on debt of a transferor (or a related person), or payments in compensation for late or delayed transfers.

LAW AND ANALYSIS

The Fund requests a ruling that it may exclude the Remission Recovery from its modified gross income under § 1.468B-2(b)(1).

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

Section 468B(g)(1) 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." Section 468B(g)(1) authorizes the issuance of regulations providing for the taxation of any such account or fund whether as a grantor trust or otherwise. Sections 1.468B-1 through 1.468B-5 regarding qualified settlement funds were issued pursuant to § 468B(g).

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" of a qualified settlement fund means gross income, as defined in § 61, computed with certain modifications.

Section 1.468B-2(b)(1) provides that, in general, 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.

The Fund was established to resolve or satisfy claims of investors that arose from the violation of federal securities laws by Promoter and the Entities, and the Remission Recovery was transferred to the Fund to resolve or satisfy such claims. The Fund represents that it constitutes a qualified settlement fund under § 1.468B-1. Accordingly, the Remission Recovery was transferred to the Fund to resolve or satisfy the liabilities for which the Fund was established. Further, as represented by the Fund, none of the Remission Recovery falls within the three specific exceptions to the general provision in § 1.468B-2(b)(1) that excludes transfers into the Fund from the Fund's gross income. Thus, based on the information submitted and representations made, we conclude that the Fund may exclude the Remission Recovery from its gross income under § 1.468B-2(b)(1). Accordingly, the Fund may exclude the Remission Recovery from its modified gross income.

PROCEDURAL MATTERS

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.

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 representatives.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

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,

Roy A. Hirschhorn
Branch Chief, Branch 6
Office of Associate Chief Counsel
(Income Tax & Accounting)