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Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:IT&A:1-PLR-114961-98
Date:

OCT 6 1998

Legend:

Bankruptcy Court =

Trust =

Parent =

Subsidiary =

a =

b =

Date 1 =

State =

City =

Dear

This responds to your request dated July 22, 1998, in which you request rulings on behalf of Parent and Subsidiary. Specifically, you request the following rulings: (1) the Trust will constitute a qualified settlement fund within the meaning of section 1.468B-1 of the Income Tax Regulations; (2) the Trust will be taxed on its modified gross income under section 1.468B-2 of the regulations; and (3) the transfer to the Trust of certain assets by, or on behalf of, Parent and Subsidiary will not be includible in the modified gross income of the Trust pursuant to section 1.468B-2(b)(1) of the regulations.

FACTS

Subsidiary is a wholly-owned subsidiary of Parent and is a member of the affiliated group of corporations of which Parent is the common parent. Subsidiary previously installed a materials containing b, exposure to which has been known to cause disease. Thousands of b-related personal injury claims have been filed against Subsidiary. Although Parent was never involved in the a business, personal injury claims have also been filed against it.

In an effort to resolve the personal injury claims, Subsidiary filed, on Date 1, a petition for bankruptcy under Chapter 11 of the United States Bankruptcy Code. The plan of reorganization provides for the establishment of the Trust, which will assume all liabilities and obligations of Subsidiary and Parent relating to b claims, and will provide for the partial payment of these claims. By virtue of certain injunctions issued under the United States Bankruptcy Code, all b-related claims against Parent, Subsidiary, and their insurance carriers can be asserted only against the Trust, and no such claims can be directly asserted or pursued against Parent, Subsidiary or their insurance carriers. Parent and Subsidiary have insurance coverage for the b-related claims. The extent of Subsidiary's coverage is in litigation.

Parent, Subsidiary, and their liability insurance carriers will transfer to the Trust the following assets: common stock of Subsidiary (as reorganized under the bankruptcy plan); cash; insurance proceeds; the right to receive insurance proceeds; proceeds from the lease, sale, or other disposition of certain real estate located in City, and the right to receive such proceeds.

The Trust will be subject to the continuing jurisdiction of the Bankruptcy Court and will be a trust under State law.

APPLICABLE LAW

Section 468B(g) of the Internal Revenue Code ("Code") provides that nothing in any provision of law will be construed as providing that an escrow account, settlement fund, or similar fund is not subject to current income tax. Pursuant to the authority of section 468B(g), the Secretary has published sections 1.468B-1 through 1.468B-5 of the regulations regarding qualified settlement funds.

Section 1.468B-1(c) of the regulations provides, in part, that a fund, account, or trust is a qualified settlement fund if–

(1) it is established pursuant to an order of, or is approved by, a court of law or other governmental authority and is subject to the continuing jurisdiction of such 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 arising out of tort, breach of contract, or violation of law; and

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

Section 1.468B-2(a) provides that a qualified settlement fund 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 section 1(e).

Section 1.468B-2(b) provides that the term "modified gross income" means gross income, as defined in section 61, computed with certain modifications. Under section 1.468B-2(b)(1), amounts transferred to a qualified settlement fund by, or on behalf of, a transferor to resolve or satisfy a liability for which the fund is established are generally excluded from gross income of the qualified settlement fund. However, dividends on stock of a transferor (or related person), interest on debt of a transferor (or related person), and payments in compensation for late or delayed transfers are not excluded from the gross income of the qualified settlement fund.

ANALYSIS AND CONCLUSION

Based on the information provided and the representations made, we conclude as follows:

1. The Trust will constitute a qualified settlement fund under section 1.468B-1 of the regulations since the three requirements for a qualified settlement fund will be satisfied. First, the Trust will be established pursuant to an order of the Bankruptcy Court and will be subject to that court's continuing jurisdiction. Second, the Trust will be established to resolve or satisfy one or more claims that have resulted from an event (or related series of events) that has occurred (the installation of materials containing b) and that has given rise to at least one claim asserting tort liability. Third, the Trust will be a trust under State law.

2. The Trust is subject to tax on its modified gross income as provided by section 1.468B-2(a) of the regulations.

3. The transfers to the Trust of the assets described above will not be includible in the modified gross income of the Trust pursuant to section 1.468B-2(b)(1) of the regulations.

Except as set forth above, no opinion is expressed regarding the federal tax treatment of this transaction under any other provision of the Code. Specifically, no

opinion is expressed with respect to the tax treatment of Subsidiary and Parent as a result of the transactions referred to above.

This ruling is directed only to the taxpayers requesting it. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to the Power of Attorney on file, the original of this letter is being sent to your representative and a copy to you.

Sincerely yours,

Assistant Chief Counsel
(Income Tax & Accounting)

By: (George Blaine)
GEORGE J. BLAINE
Chief, Branch 1