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Department of the Treasury

Washington, DC 20224

[Third Party Communication:

Date of Communication: Month DD, YYYY]

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:INTL:B01

PLR-118170-24

Date:

April 08, 2025

In Re:

TY:

LEGEND

Receivership	=
Receiver A	=
Receiver B	=
Company	=
Owner	=
Product A	=
Court	=
Year 1	=
Year 2	=
Year 3	=
Year 4	=
Year 5	=
Year 6	=
Year 7	=
Year 8	=
\$a	=
\$b	=
\$c	=
\$d	=
\$e	=
\$f	=
\$g	=

\$h	=
\$i	=
\$j	=
\$k	=
\$l	=
\$m	=
<i>a</i>	=
<i>b</i>	=
<i>c</i>	=
<i>d</i>	=
<i>e</i>	=
<i>f</i>	=
a%	=
b%	=
c%	=

Dear :

This letter responds to your letter dated , submitted on behalf of the Receivership, a qualified settlement fund (QSF) under section 468B, requesting a ruling that the Receivership is not required to withhold federal income tax pursuant to sections 1441 and 1442 or meet the reporting requirements under section 1461 and Treas. Reg. § 1.1461-1(b) and (c) in respect of funds that will be distributed by the Receivership to claimants who certify that they are non-U.S. residents or foreign corporations for U.S. federal income tax purposes.

The ruling contained in this letter is predicated upon facts and representations submitted by, or on behalf of, the Receivership and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for a ruling. Verification of the factual information, representations, and other data may be required as a part of the audit process.

FACTS

Company was founded in Year 1 by Owner, who was Company's sole owner.

Company marketed itself as a successful internet advertising company and offered an advertising product to customers called Product A. Company advertised that purchasing Product A would entitle the purchaser to receive a certain number of (1) "clicks" to his or her internet banner ad, and (2) visitors to his or her website. The clicks and visitors would purportedly increase the popularity of a purchaser's website and result in higher rankings for the purchaser's website on search engines. In addition, Company advertised that Product A would allow a purchaser to share in Company's

profits from all advertising services that Company would sell, limited to a return of no more than \$a per Product A.

Company sold each Product A for \$b. This selling price was comprised of two separate components. The first component, which was valued at \$c, was for the clicks and website visitors. The second component, which was valued at \$d, was for the purchaser's right to share in the profits of Company's advertising services.

In lieu of receiving the promised payout from their investments in Product A, purchasers were allowed to roll their alleged returns into additional purchases of Product A to purportedly continue earning additional returns.

From Year 1 through Year 2, Company sold approximately \$e in unregistered offerings of Product A to over a customers worldwide. Most customers purchased and owned multiple quantities of Product A and reinvested any promised returns into additional purchases of Product A.

In reality, Company did not operate an actual advertising business but instead derived a% of its revenue from the sale of Product A to customers. Company then used the funds from the sale of Product A to pay back Product A owners who requested payment of their investment and promised return. Approximately a% of the funds Company paid back to Product A owners came from funds paid by other Product A purchasers. Only b% of the funds that Company paid back to Product A owners came from Company's sales of other advertising products.

On , Year 2, the Securities and Exchange Commission ("SEC") filed a suit in the Court alleging that Owner and Company were operating a Ponzi scheme. On that same day, the Court issued a temporary restraining order freezing the assets of both Owner and Company.

On , Year 2, the Court appointed Receiver A for the purpose of marshalling and preserving all of the assets of Owner and Company.

On , Year 2, the Court issued an order authorizing Receiver A to hire a group of forensic accountants. The forensic accountants were to assist Receiver A in marshalling and preserving the assets obtained from Owner and Company and in pursuing any claims by purchasers of Product A against Owner and Company.

Because Owner and Company kept no accounting records for Company, Receiver A requested the forensic accountants to attempt to determine the amount of unreturned investment made by each purchaser of Product A (the "Net Principal Investment").

The forensic accountants analyzed and recreated financial records for Company based on information obtained from Company's computer records and third-party documents.

As part of this analysis, the forensic accountants estimated the Net Principal Investment for each Product A owner.

After receiving the estimated Net Principal Investments, Receiver A motioned the Court to approve a claims process so that all Product A owners could submit claims for reimbursement of their investments in Product A. On _____, Year 3, the Court granted Receiver A's motion and established a claims process for Product A owners. The Court's order expressly stated that claimants could not be reimbursed for any "earnings" on their investments in Product A. Claimants could be reimbursed for only their unreimbursed investments in Product A.

By _____, Year 4, Receiver A received a total of *b* "Proofs of Claim" from owners of Product A asserting \$*f* in total claims.¹ Receiver A then reviewed and analyzed the Proofs of Claim to determine the amount by which any claim by a claimant exceeded the claimant's Net Principal Investment as calculated by the forensic accountants (such amount, the "Net Investment Discrepancy").

On _____, Year 4, the Court entered an order establishing a claims objection process. As part of the objection process, Receiver A objected to approximately *c* claims that, in Receiver A's business judgment, were not supported by law or were not based on Net Principal Investments. The claimants were permitted to respond to Receiver A's objections, and approximately *d* claimants submitted a response. After receiving the responses, Receiver A could first attempt to resolve any disputed claims informally (that is, without assistance from the Court).

Receiver A exercised business judgment and stipulated with a small number of claimants to allow their claims in certain circumstances when there was a Net Investment Discrepancy of less than \$*h*.

After Receiver A attempted to resolve the disputed claims informally, there were approximately *e* remaining unresolved claims. The remaining unresolved claims were adjudicated by a Court-appointed special master.

On _____, Year 5, the Court entered a final judgment against Owner. The final judgment found Owner liable to the SEC for disgorgement in the amount of \$*i*, with amounts collected on that sum to be first allocated toward victim compensation. The Court also ordered that Owner was liable for penalties to the SEC in the amount of \$*j*.

On _____, Year 6, the Court entered a final judgment against Company. The final judgment found Company liable for disgorgement in the amount of \$*k*. The final judgment stated that the judgment shall be deemed satisfied by the "collection efforts to date and the future distribution of funds to allowed claims of investors by the [Receiver]."

¹ This total excludes a Proof of Claim asserted in the amount of \$*g*.

On _____, Year 7, the Court entered an Order replacing Receiver A with Receiver B as Receiver of the Receivership.

On _____, Year 8, Receiver B filed a motion with the Court for approval of a “Proposed Plan of Distribution.” As stated in the Proposed Plan of Distribution, there were approximately *f* allowed claims from Product A owners in the total amount of \$*l* (“Allowed Claims”) and approximately \$*m* of cash available for initial distribution to holders of Allowed Claims. Accordingly, the Proposed Plan of Distribution requested the Court to approve a distribution to holders of Allowed Claims on a pro rata basis, with each holder receiving an approximate amount of *c*% of their Allowed Claim. Although the Proposed Plan of Distribution has not yet been fully approved, Receiver B anticipates making a distribution of at least *c*% to the holders of Allowed Claims if all holders of Allowed Claims receive a distribution. In any event, no holder will receive a distribution in an amount that exceeds the holder’s Allowed Claim.

As part of the Proposed Plan of Distribution, the holders of Allowed Claims are required to submit (1) a Form W-9, Request for Taxpayer Identification Number and Certification (if the holder is a U.S. person for income tax purposes), (2) a Form W-8BEN, Certificate of Foreign Status of Beneficial Owner for United States Withholding and Reporting (Individuals) (if the holder is a non-U.S. individual), or (3) a Form W-8BEN-E, Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities) (if the holder is a non-U.S. entity). Receiver B created an online portal through which the holders could submit their Forms W-8BEN, Forms W-8BEN-E, or Forms W-9 (collectively the “Tax Forms”). Any holder of an Allowed Claim that does not properly complete and execute the applicable Tax Form will not receive a distribution.

On _____, Year 8, the Court issued an Order granting the Proposed Plan of Distribution in part and denying it in part. In its Order, the Court approved certain distribution procedures described by Receiver B in the Proposed Plan of Distribution (including, but not limited to, the collection of necessary information, including the Tax Forms, to make distributions to holders of Allowed Claims and the establishment of procedures for making distributions). The Court also approved the pro rata distribution methodology offered by Receiver B for determining the total distribution for each Allowed Claim. However, the Court denied Receiver B’s request to make initial distributions to holders of Allowed Claims. The Court stated in its Order that Receiver B could not make any distributions to claimants without the Court’s permission. Finally, the Court authorized Receiver B to seek a private letter ruling regarding any potential tax consequences and applicable withholdings.

LAW AND ANALYSIS

A. Overview

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. Treas. Reg. §§ 1.468B-1 through 1.468B-5 regarding QSFs were issued pursuant to section 468B(g)(1).

Treas. Reg. § 1.468B-2(l)(2)(i) provides that, in general, payments and distributions by a QSF are subject to the information reporting requirements of part III of subchapter A of chapter 61 of the Code, and the withholding requirements of subchapter A of chapter 3 of subtitle A and subtitle C of the Code.

Treas. Reg. § 1.468B-2(l)(2)(ii) provides that a QSF must make a return for, or must withhold tax on, a distribution to a claimant if one or more transferors would have been required to make a return or withhold tax had that transferor made the distribution directly to the claimant.

Section 871(a) imposes a 30 percent tax on U.S. source interest, dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, and other fixed or determinable annual or periodical gains, profits, and income (FDAP) received by nonresident alien individuals.

Sections 1441(a) and 1442(a) provide, in general, that all persons, in whatever capacity acting, having the control, receipt, custody, disposal, or payment of items of income that are FDAP of a nonresident alien individual or foreign corporation, shall deduct and withhold a tax of 30 percent from such items.

Treas. Reg. § 1.1441-2(b)(1)(i) provides, in relevant part, that FDAP does not include items of income excluded from gross income under a provision of law without regard to the U.S. or foreign status of the owners of the income.²

Treas. Reg. § 1.1441-1(b)(2)(i) generally provides that a withholding agent must withhold 30 percent of a payment of FDAP made to a payee that is a foreign person unless it can reliably associate the payment with documentation establishing that the payee is a U.S. person or a foreign person entitled to a reduced rate of withholding. For purposes of establishing a payee’s status, Treas. Reg. § 1.1441-1(b)(2)(i) provides that a payor can generally rely on a valid withholding certificate that is a Form W-8BEN, W-8BEN-E, or Form W-9. However, Treas. Reg. § 1.1441-1(b)(2)(vii)(A) provides that the payor cannot rely on a withholding certificate if the payor “has . . . actual knowledge or

² Under § 1.1442-1, the regulations applicable to section 1441 under §§ 1.1441-1 through 1.1441-9 apply for purposes of section 1442.

reason to know that any of the information, certifications, or statements in, or associated with, the documentation are incorrect.”

Treas. Reg. § 1.1441-2(b)(1)(iii) defines whether income is fixed or determinable for purposes of section 1441: “An item of income is fixed when it is to be paid in amounts definitely pre-determined. An item of income is determinable if the amount to be paid is not known but there is a basis of calculation by which the amount may be ascertained at a later time.”

Section 1461 provides that “every person required to deduct and withhold any tax under [chapter 3 of the Code] is hereby made liable for such tax and is hereby indemnified against the claims and demands of any person for the amount of any payments made in accordance with the provisions of this chapter.”

Treas. Reg. § 1.1461-1(b) requires withholding agents to file an annual income tax return reporting the amount of income paid and tax withheld with respect to payments required to be reported on a Form 1042-S, Foreign Person’s U.S. Source Income Subject to Withholding.

Treas. Reg. § 1.1461-1(c) requires withholding agents to file an information return (on Form 1042-S) and furnish a copy to a payee with respect to a payment of an amount subject to reporting. Under Treas. Reg. § 1.1461-1(c)(2), an amount subject to reporting is generally an amount of U.S. source FDAP (and certain other types of income, not applicable here).

Section 61(a) provides the general rule that, except as otherwise provided by law, gross income includes all income from whatever source derived. Gross income includes income realized in any form, whether in money, property, or services. Treas. Reg. § 1.61-1(a). This definition encompasses all “accessions to wealth, clearly realized, over which taxpayers have complete dominion.” *Commissioner v. Glenshaw Glass Co.*, 348 U.S. 426, 431 (1955).

A return of a taxpayer’s investment is generally not gross income under section 61. *Burnet v. Logan*, 283 U.S. 404, 414 (1931); *Commissioner v. Meyer*, 139 F.2d 256 (6th Cir. 1943).

While a recovery of invested capital is usually not taxable, the exclusion from gross income presupposes that the taxpayer has not derived a tax benefit therefrom, such as a deduction. Section 111(a) provides that gross income does not include income attributable to the recovery during the taxable year of any amount deducted in a prior taxable year to the extent that amount did not reduce the amount of tax imposed by chapter 1 of the Code.

B. No withholding or reporting is required for the distributions to non-U.S. claimants.

You have represented that (1) “earnings” accumulated by claimants through the Company cannot serve as the basis for any claim, and (2) Receiver B will not consider earnings when determining the distribution amount for each claimant. Therefore, claimants will receive payment for only the loss of their unreturned principal in their investments.

You have further represented that Receiver B will collect, maintain, and rely on the Tax Forms in accordance with the requirements of regulations under section 1441. As part of this process, each non-U.S. claimant will submit a Form W-8BEN or W-8BEN-E through the online portal certifying that any income is not effectively connected with the conduct of a trade or business in the United States. Receiver B does not (and will not in the future be in a position to) know or have reason to know whether any of the claimants have received a prior tax benefit through any deduction related to their investments in Product A.

Finally, for purposes of this ruling, we have assumed as a fact that, as non-U.S. persons that are not engaged in the conduct of a U.S. trade or business, none of the claimants has received a tax benefit through a claimed deduction related to the claimant’s investments in Product A.

Based on the above facts and representations, and assuming no prior tax benefit, the distributions by the Receivership to non-U.S. claimants are not payments of income within the meaning of section 61 because the non-U.S. claimants will not have an accession to wealth or any kind of economic gain as a result of receiving the distribution. See *Commissioner v. Glenshaw Glass Co.*, 348 U.S. at 431. Because Receiver B does not know or have reason to know whether any claimant has received such a prior tax benefit, the payment would not be “fixed or determinable” within the meaning of section 1441. See Treas. Reg. § 1.1441-2(b)(1)(iii). These payments are therefore not subject to withholding under section 1441 or the reporting requirements under section 1461 and Treas. Reg. § 1.1461-1(b) and (c).

CONCLUSION

Based solely on the information provided and the representations made, we conclude that no withholding or reporting is required under sections 1441 and 1442, section 1461, or Treas. Reg. § 1.1461-1(b) and (c) with respect to the distributions to non-U.S. claimants.

This ruling applies only to payments made to non-U.S. claimants pursuant to the Proposed Plan of Distribution or any amended or new Court-approved Plan of Distribution, provided, however, that under such Court-approved Plan of Distribution, no holder would receive a distribution in excess of its Allowed Claim and no distribution would be made to any holder of an Allowed Claim that does not properly complete and execute the applicable Tax Form.

No opinion is expressed as to the validity of any Tax Forms submitted by any claimant through the online portal.

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.

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.

In accordance with a power of attorney on file in this office, a copy of this ruling is being furnished to your authorized representatives.

Sincerely,

Associate Chief Counsel
(International)

By: /S/
Subin Seth
Senior Counsel, Branch 1
Office of the Associate Chief Counsel
(International)

Enclosure
Copy for § 6110 purposes

cc: