

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

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Refer Reply To:
CC:PA:APJP:01/PLR-154862-01
Date:
February 6, 2002

Legend

Receiver =

Defendants =

Individual 1 =

Individual 2 =

Individual 3 =

Corporate Defendant 1 =

Corporate Defendant 2 =

Corporate Defendant 3 =

Corporate Defendant 4 =

Corporate Defendant 5 =

Company 1 =

Tax Year 1 =

CC:PA:APJP:01/PLR-154862-01

Tax Year 2 =

Tax Year 3 =

Date 1 =

Date 2 =

Dear

This is in response to your request dated September 27, 2001, and supplemental correspondence for a private letter ruling under section 6012 of the Internal Revenue Code. Specifically, you request the following rulings:

1. That Receiver is not required to file federal income tax returns for Tax Years 1, 2, 3, and any taxable year during the duration of the receivership with respect to the following Defendants:

- a. Individual 1;
- b. Individual 2;
- c. Individual 3 (and/or the estate of Individual 3);
- d. Corporate Defendant 1;
- e. Corporate Defendant 2;
- f. Corporate Defendant 3;
- g. Corporate Defendant 4; and
- h. Corporate Defendant 5.

2. That, with respect to filing federal income tax returns for Company 1, Receiver, as sole director of the corporation shall:

- a. Direct the officers of the corporation to prepare, sign, and file federal income tax returns with respect to Tax Years 1, 2, 3, and all future years during which Receiver serves as director;
- b. Exclude revenues and expenses arising with respect to any and all of the properties currently titled in the names of the various Defendants; and
- c. Generate a single K-1 as part of this process and issue it to Individual 3, his successors, assigns, and/or heirs.

You have expressed that, although Receiver may not be required to file federal income tax returns with respect to Defendants, Receiver is willing to file information returns on behalf of Company 1 reflecting the Defendants' share of income and gain received by Company 1 on their behalf for Tax Years 1, 2, 3, and any subsequent tax year in which he remains Receiver.

Facts

Individual 1 and Individual 2 are husband and wife, and parents of Individual 3. From Date 1 to Date 2, Individual 1 owned and controlled several corporations with business activities throughout the United States. During this time, Individual 1 used nominees, foreign corporations, and off-shore accounts to conceal ownership of his and Individual 3's assets in the United States. Several companies were formed and used by Individual 1 in his efforts to evade taxes. Each of the corporate Defendants listed above has been used to evade taxes by Individual 1 and/or Individual 3.

Corporate Defendant 1 was formed by Individual 1. Although initially owned by Individual 1, the most recent tax returns for Corporate Defendant 1 suggest that all of the stock is owned by Corporate Defendant 2, a foreign corporation that is owned, according to the Defendants, by foreign investors. In addition, Corporate Defendant 3 and Corporate Defendant 4 have both been reported as being owned by Corporate Defendant 1. Corporate Defendant 5 is a company that was owned by Individual 3. Although questions exist regarding ownership of some of the companies, each has real property in the United States to which federal tax liens have attached.

During Tax Year 1, the United States brought an action in a United States District Court, and pursuant to section 7401 of the Internal Revenue Code (Code), sought to: (1) reduce unpaid federal income and transferee tax liabilities of the Defendants to judgment; (2) foreclose on federal tax liens against Defendants; (3) sell property subject to the federal tax liens; and (4) upon proper application, have a receiver in equity appointed. The action was brought against Defendants and third parties holding security interests in certain real properties subject to the federal tax liens. By the court's order, Receiver was appointed primarily to take possession of and manage the real properties subject to the federal tax liens, protect the tenants' interests therein, preserve the value of the properties, and provide for the orderly sale of the properties in a manner and on terms, as directed by the court.

Pursuant to the appointment, Receiver took control of the real properties subject to the federal tax liens. Although title to the properties was held in the names of the various entities under the receivership order, revenues and expenses generated by all of these properties have been handled through accounts managed by Company 1, an S Corporation formed by Individual 3.

Although the record owners of the stock of Company 1 are listed as Individual 3's children, the Internal Revenue Service (IRS) determined that Individual 3 is the beneficial owner of the stock and seized the stock as personal property of Individual 3. At a special meeting of the shareholders, Receiver took possession of the stock from the IRS. Shortly thereafter, the court confirmed that Individual 3 owned the stock of Company 1, with his children as nominees. The real properties held in receivership continue to be managed by Company 1, with Receiver as sole director of the corporation.

CC:PA:APJP:01/PLR-154862-01

Individual 1 and Individual 2 currently reside in one of the rental properties held in receivership. Individual 3 left the United States shortly after the IRS made jeopardy assessments against him. Since then, a suggestion of Individual 3's death has been filed with the federal court. However, no death certificate has been filed and no probate proceedings initiated with respect to the suggestion of his death.

Law and Analysis

Receiver's Filing Obligations for Individual Defendants

Section 6012(a) of the Code provides, in part, that returns with respect to income taxes shall be made by every individual, with certain exceptions, and every corporation subject to taxation.

Section 1.6012-3(b)(5) of the Income Tax Regulations (regulations) requires a receiver who stands in place of an individual to file the required income tax return with respect to that individual. However, section 1.6012-3(b)(5) also provides that when the receiver has only part of the property of the individual, he is not required to make the return and the individual must file his own.

In the present situation, with respect to Individual 1 and Individual 2, Receiver is not required to file income tax returns because he does not have all of their property. Individual 1 has used multiple nominees, foreign corporations, and off-shore accounts to conceal ownership of his assets in the United States. While Receiver has possession of properties owned by some of the companies created by Individual 1, he does not have all the property owned by Individual 1 and Individual 2. Therefore, he is not required to make the necessary federal income tax returns for Individual 1 and Individual 2.

Likewise, Receiver is not required to file income tax returns for Individual 3. Receiver has possession of Individual 3's stock in Company 1, but has no other assets owned by him. Since Receiver does not have possession of all property owned by Individual 3, he is not required to make the necessary federal income tax returns with respect to Individual 3.

Receiver's Filing Obligations for Corporate Defendants

Section 6012(b)(3) of the Code provides that in a case where a receiver, by order of a court of competent jurisdiction, by operation of law or otherwise has possession of or holds title to all or substantially all the property or business of a corporation, whether or not such property or business is being operated, such receiver shall make the return of income for such corporation in the same manner and form as corporations are required to make such returns.

Section 1.6012-3(b)(4) of the regulations provides that a receiver in charge of only a small part of the property of a corporation need not make the return of income.

CC:PA:APJP:01/PLR-154862-01

The principle set forth in section 6012(b)(3) of the Code and section 1.6012-3(b)(4) of the regulations was explained in 1932 by the United States Supreme Court in North American Oil v. Burnet, 286 U.S. 417, 422 (1932), where the Court held the following:

First. The income earned in 1916 and impounded by the receiver in that year was not taxable to him, because he was the receiver of only a part of the properties operated by the company. Under section 13(c) of the Revenue Act of 1916, receivers who 'are operating the property or business of corporations,' and 'any income tax due' was to be 'assessed and collected in the same manner as if assessed directly against the organization of whose business or properties they have custody and control.' The phraseology of this section was adopted without change in the Revenue Act of 1918, 40 Stat. 1057, 1081, c 18, section 239. The regulations of the Treasury Department have consistently construed these statutes as applying only to receivers in charge of the entire property or business of a corporation; and in all other cases have required the corporations themselves to report their income. Treas. Regs. 33, arts. 26, 209; Treas. Regs. 45, arts. 424, 622. That construction is clearly correct. The language of the section contemplates a substitution of the receiver for the corporation; and there can be such substitution of the receiver for the corporation; and there can be such substitution only when the receiver is in complete control of the properties and business of the corporation. Moreover, there is no provision for the consolidation of the return of a receiver of part of a corporation's property or business with the return of the corporation itself. It may not be assumed that Congress intended to require the filing of two separate returns for the same year, each covering only a part of the corporate income, without making provision for consolidation so that the tax could be based upon the income as a whole.

In the present situation, Receiver does not have possession of or hold title to all or substantially all the property or business of the corporate Defendants. Many of the companies may be foreign corporations and have been used to conceal assets owned by the individual Defendants. Receiver has possession of only certain real property located in the United States to which federal tax liens have attached. Receiver is not in complete control of all property and business of the corporate Defendants and is unable to prepare complete and accurate returns for the companies. Therefore, Receiver is not required to file income tax returns for the corporate Defendants.

Receiver's Filing Obligations for Company 1

In accordance with the requirement in section 6012 of the Code that every corporation subject to taxation file an income tax return, section 6037(a) provides that every S Corporation shall make a return stating specifically the items of its gross income and allowable deductions, the names and addresses of all persons owning stock in the corporation and the number of shares of stock owned by each shareholder.

Section 1.6037-1(a) of the regulations provides that an S corporation must file Form 1120S, U.S. Income Tax Return for an S Corporation, setting forth the items of gross

CC:PA:APJP:01/PLR-154862-01

income and the deductions allowable in computing taxable income as required by the return form or in the instructions issued with respect thereto, and signed in accordance with section 6062 of the Code by the person authorized to sign a return.

Section 6062 of the Code states that the return of a corporation with respect to income shall be signed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer, or any other officer duly authorized so to act.

In the present situation, Company 1 is an S corporation subject to taxation and is required to make returns of income. Receiver, as sole director of the corporation, is required to ensure that the necessary returns are prepared and signed by the officer(s) duly authorized to sign the returns. The income tax returns must be made on Form 1120S and should exclude revenues and expenses associated with the real properties managed by Company 1 to the extent that they are not items of gross income or deductions allowable in computing the taxable income of the corporation. Receiver shall issue the accompanying Form K-1 to Individual 3, his successors, assigns, and/or heirs, reflecting his allocable share of the income and/or deductions of the corporation as owner of 100% of the stock of Company 1.

Conclusion

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

1. That, with respect to Tax Years 1, 2, 3, and any taxable year during the duration of the receivership:
 - a. Receiver is not required to file federal income tax returns for any of the individual Defendants because he does not have possession of all property owned by them; and
 - b. Receiver is not required to file federal income tax returns for any of the corporate Defendants since he does not have possession of or hold title to all or substantially all of the property and business of those corporations.
2. That, with respect to Tax Years 1, 2, 3 and all future years during which Receiver is director of Company 1:
 - a. Receiver is required to ensure that federal income tax returns are prepared, signed by the appropriate official and filed in accordance with applicable tax laws;
 - b. Revenues and expenses derived from the properties held in receivership shall be excluded from the returns to the extent that they are not items of gross income or deductions allowable in computing taxable

CC:PA:APJP:01/PLR-154862-01

income for Company 1; and

c. Receiver is required to issue Form K-1 to Individual 3, his successors, assigns, and/or heirs, as the sole shareholder of Company 1.

Receiver's willingness to file information returns on behalf of Company 1 with respect to each of the Defendants reflecting their share of income or gain received on their behalf by Company 1 is generally consistent with the purpose of the information reporting guidelines. Therefore, Receiver should file the appropriate information returns on behalf of Company 1 with respect to the Defendants showing their share of income or gain received by Company 1 on their behalf.

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

Sincerely,
James C. Gibbons
Chief, Branch 1
Office of the Assistant Chief Counsel
(Administrative Provisions and
Judicial Practice)

Enclosures (2):

Copy of this letter
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cc: