



**COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL**

August 19, 2010

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Bala Cynwyd, PA 19004

**Re: Pennsylvania Personal Income Tax
Private Letter Ruling No. PIT-10-004**

**Receiverships
Filing Requirements**

Dear Mr. Flynn:

The Department of Revenue, Office of Chief Counsel, issues this private letter ruling under Section 3.3 of Title 61 of the Pennsylvania Code. 61 Pa. Code § 3.3. This letter ruling applies to Marion A. Hecht as Receiver for Joseph S. Forte and Joseph Forte, L.P. (collectively the "Receivership"). Marion A. Hecht was appointed Receiver and is acting in her sole capacity as Receiver. This letter ruling is limited to the specific facts summarized below that the Receiver provided. In the absence of a statutory or regulatory change, a court decision providing an interpretation different from the Department's position, or rescission of this letter by the Department, the Receiver may rely on this letter ruling for five (5) years from the date it is issued. When this letter ruling expires, the Receiver may request that the Office of Chief Counsel re-issue the ruling.

ISSUES:

- (1) Are the Receivership (which was established pursuant to the Order of the United States District Court for the Eastern District of Pennsylvania dated March 30, 2009 (the "Order")), and its Qualified Settlement Fund "taxpayers" for purposes of Pennsylvania Personal Income Tax, Pennsylvania Corporate Net Income Tax, Pennsylvania Capital Stock Franchise Tax, or Pennsylvania Partnership Information Returns?
- (2) Is the Receiver responsible for filing Pennsylvania tax returns on behalf of Joseph S. Forte, Joseph Forte, L.P., or the Receivership?

CONCLUSIONS:

- (1) Neither the Receivership nor the Qualified Settlement Fund are taxpayers for Pennsylvania Personal Income Tax purposes. In addition, the Qualified Settlement Fund is not subject to the Pennsylvania Corporate Net Income Tax or the Capital Stock Franchise Tax.
- (2) The Receiver shall be responsible for filing a final Pennsylvania Partnership Information Return for Joseph Forte L.P. for the 2008 tax year.
- (3) The Receiver shall not be responsible for filing any amended Pennsylvania Partnership Information Returns for tax years prior to the 2008 tax year for Joseph Forte, L.P. or for filing any Pennsylvania Partnership Information Return for Joseph Forte L.P. for tax years after the 2008 tax year.
- (4) The Receiver shall not be responsible for filing Pennsylvania Personal Income Tax returns for Joseph S. Forte, an individual, for any tax years either before or after the entry of the Order establishing the Receivership.

FACTS:

Pursuant to its Order, the United States District Court for the Eastern District of Pennsylvania (the "Court"), in Civil Actions No. 09-CV-0063 and No. 09-CV-0064, took exclusive jurisdiction and possession of the "Receivership Assets" (as defined in the Order) of Joseph Forte, L.P. (the "Limited Partnership") and Joseph F. Forte ("Forte"), together with the "Receivership Records" (as defined in the Order), and appointed Marion A. Hecht, the Receiver, custodian for the Receivership Assets and Records. The Limited Partnership and Forte are collectively referred to as the "Defendants."

The Order further authorizes the Receiver to take possession of the Receivership Assets and the Receivership Records on behalf of the Court, and declares that the goal and purpose of the Receivership created by the Order is to assume control of, marshal, pursue, and preserve the Receivership Assets with the objective of maximizing the recovery of defrauded investors and, to the extent the assets recovered may be inadequate to make them whole, ensuring that the distribution of those assets is as just and equitable as practicable.

Paragraph X.F of the Order further authorizes the Receiver to "[l]iquidate, windup, and terminate the business and affairs of the Limited Partnership, but, with authority, in aid of such liquidation, windup, and termination of the Limited Partnership, conduct the business operations of the Limited Partnership and the entities controlled by the Limited Partnership or in which the Limited Partnership has an interest, but only to the extent that the Receiver, in the exercise of her

discretion, determines such continued conduct of the business to be advisable in the interest of maximizing the value of the Receivership Estate [including additional detail relating thereto].”

The Receiver states that it has not exercised the authority granted by paragraph X.F of the Order to “conduct the business operations of the Limited Partnership.” The Receiver has transferred to a “qualified settlement fund” created by the Order (“QSF” as defined in section 1.468B-I(c) of the Treasury Regulations) the funds held in two bank and an investment account formerly held in the name of the Limited Partnership, which were the only liquid assets held by the Limited Partnership at the time of the entry of the Order. As to Forte, since the entry of the Order, the Receiver has sought to liquidate and deposit into the QSF all his assets, whether held in his own name or in the name of him and his wife.

Paragraph X.U of the Order instructs the Receiver to “[c]omply with all income tax reporting requirements, including the preparation and filing of tax returns, with respect to Receivership Assets and business and, as ordered, any other assets collected in this matter or any related matter; and be designated the administrator of any Distribution Fund, pursuant to section 468B(g) of the Internal Revenue Code (IRC), 26 U.S.C. § 468B(g), and related regulations, and satisfy the administrative requirements imposed by those regulations, including but not limited to (a) obtaining a taxpayer identification number, (b) filing applicable federal, state, and local tax returns and paying taxes reported thereon out of the Receivership Assets and/or the Distribution Fund, and (c) satisfying any information, reporting, or withholding requirements imposed on distributions from the Receivership Assets and/or the Distribution Fund.”

No Pennsylvania Partnership Information Return has been filed by the Limited Partnership for the tax year ending December 31, 2008 (“2008 tax year”). This Office assumes that the Limited Partnership was terminated for Pennsylvania Partnership Information Return purposes prior to December 31, 2008.

In addition, this Office assumes that the Receiver does not possess the books and records necessary to amend any Pennsylvania Partnership Information Returns filed by the Limited Partnership for tax years prior to 2008.

The Receiver requests that the Department issue a ruling concluding the following:

(1) Neither the Receivership nor the Qualified Settlement Fund are taxpayers for Pennsylvania Personal Income Tax purposes. In addition, the Qualified Settlement Fund is not subject to the Pennsylvania Corporate Net Income Tax or the Capital Stock Franchise Tax.

(2) The Receiver shall be responsible for filing a final Pennsylvania Partnership Information Return for the Limited Partnership for the 2008 tax year based on available records and with the appropriate disclaimers.

(3) The Receiver shall not be responsible for filing amended Pennsylvania Partnership Information Returns for years prior to the 2008 tax year.

(4) The Receiver shall not be responsible for filing Pennsylvania Personal Income Tax returns for Joseph S. Forte for any tax years either before or after the entry of the Order establishing the Receivership.

DISCUSSION:

Article III of the Tax Reform Code of 1971, as amended (“the Pennsylvania Personal Income Tax”), defines taxpayer as “any individual, estate or trust subject to the tax imposed by this article, any partnership having a partner who is a taxpayer under this act, any Pennsylvania S corporation having a shareholder who is a taxpayer under this act and any employer required to withhold tax on compensation paid.” 72 P.S. § 7301(w). Neither the statute nor the regulations define the term “trust,” but both define the terms resident trust and nonresident trust. The statute defines a “resident trust” as follows:

- (1) A trust created by the will of a decedent who at the time of his death was a resident individual; and
- (2) Any trust created by, or consisting in whole or in part of property transferred to a trust by a person who at the time of such creation or transfer was a resident. The term “resident trust” under this subclause (2) shall not include charitable trusts or pension or profit sharing trusts.

72 P.S. § 7301(s).

The definition for “resident trust” contained in the Department of Revenue’s (“the Department’s”) regulations states that a resident trust shall be one of the following:

- (i) A trust created by the will of an individual who at the time of his death was a resident individual.
- (ii) A trust created by a person who at the time of the creation was a resident.
- (iii) A trust consisting in whole or in part of property transferred to the trust by a person who at the time of the transfer was a resident.

61 Pa. Code § 101.1.

In addition, the Pennsylvania Personal Income Tax Guide, a Department published compendium of the Department's positions on Pennsylvania Personal Income Tax issues, states that a trust for Pennsylvania Personal Income Tax purposes does not include a "trust created exclusively for the benefit of creditors" nor "qualified settlement funds and other trusts that are treated as corporations or partnerships for federal income tax purposes." Pennsylvania Personal Income Tax Guide, Chapter 14: Estates, Trusts, and Decedents, "Trust and Settlor –Defined," available on the Department's website, www.revenue.state.pa.us. It should be noted, that "qualified settlement funds," which are treated as separate entities pursuant to the Internal Revenue Code, are not found in Pennsylvania law.

As such, the Receivership and the "qualified settlement fund" established by the Court's Order are not "taxpayers" for Pennsylvania Personal Income Tax purposes. Additionally, this Office has ruled that an IRC §468B settlement fund is not subject to the Pennsylvania Corporate Net Income Tax or the Pennsylvania Capital Stock Franchise Tax. See Private Letter Ruling No. CRP-06-002, available on the Department's website.

The statute, however, defines fiduciary to mean "a guardian, trustee, executor, administrator, *receiver*, conservator or any person acting in any trust or similar capacity, whether domiciliary or ancillary." 72 P.S. § 7301(i)(emphasis added).

The Court's Order instructs the Receiver to "[c]omply with all income tax reporting requirements, including the preparation and filing of tax returns, with respect to Receivership Assets and business and, as ordered, any other assets collected in this matter or any related matter[.]"

The Pennsylvania Personal Income Tax requires that:

Every partnership having a resident partner or having any income derived from sources within this Commonwealth shall make a return for the taxable year setting forth all items of income, loss and deduction, and such other pertinent information as the department may by regulations prescribe. Such return shall be filed on or before the fifteenth day of the fourth month following the close of each taxable year. For purposes of this subsection, "taxable year" means year or period which would be a taxable year of the partnership if it were subject to tax under this article.

72 P.S. § 7335(c).

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Pursuant to the Pennsylvania Personal Income Tax Guide, an existing partnership terminates only when: (a) neither the partnership nor any of its partners continue the business, financial operation, or venture of the partnership, or (b) within a 12-month period, the partners sell or exchange 50 percent or more of their ownership interest. Pennsylvania Personal Income Tax Guide, Chapter 16: Pass Through Entities, available on the Department's website, www.revenue.state.pa.us.

Based on the facts provided, the Department assumes that the Limited Partnership was terminated for Pennsylvania Partnership Tax purposes during the 2008 tax year. The Department understands that the Receiver is in possession of a schedule of the limited partners' capital accounts that has been reconstructed utilizing the best available, albeit potentially incomplete, information concerning capital contributed, distributed and transferred on a cash basis (as contrasted with a tax capital basis). The Department therefore assumes that, utilizing that reconstructed schedule, the Receiver can prepare and file, with appropriate disclosures, a Pennsylvania Partnership Information Return for the 2008 tax year.

Pursuant to the Court's Order and as fiduciary of the Limited Partnership and custodian of the Receivership Records, the Receiver is required to prepare and file the Pennsylvania Partnership Information Return of the Limited Partnership for the 2008 tax year based on available records with appropriate disclosures.

The Receiver is not required to amend any Pennsylvania Partnership Information Returns of the Limited Partnership filed with the Department for tax years prior to 2008.

In addition, the Receiver shall not be responsible for preparing and filing Pennsylvania Personal Income Tax returns for Joseph S. Forte for any tax years either before or after the entry of the Order establishing the Receivership.

I trust that this adequately responds to your request.

Sincerely,

/s/ William A. Loy

William A. Loy
Assistant Counsel

cc: Marion A. Hecht

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