pennsylvania
DEPARTMENT OF REVENUE

July 3, 2007
Pennsylvania Personal Income Tax
No. PIT-07-006
Qualified Settlement Fund

ISSUE:

Is Taxpayer, a designated settlement fund subject to the provisions of Internal Revenue Code ("IRC") Section 468B, a "taxpayer" for Pennsylvania Personal Income Tax purposes?

CONCLUSION:

No. Since IRC § 468B provides that a designated settlement fund is treated as a corporation, Taxpayer is not a "taxpayer" for Pennsylvania Personal Income Tax purposes.

FACTS:

Taxpayer is a qualified settlement fund (QSF) as defined in IRC § 468B(d).

Taxpayer was established after the United States Securities and Exchange Commission ("SEC") litigated an enforcement action in the United States District Court for the Eastern District of Pennsylvania ("the Court"). The Court ordered the defendants to pay approximately $200,000 of disgorgement, prejudgment interest and penalties to the clerk of the Court ("Distribution Fund"). The Distribution Fund was deposited into an interest-bearing account, and the interest is taxable for Federal income tax purposes.

In 2006, the Court approved the appointment of a "Tax Administrator" to provide tax administrator services to the Distribution Fund. These services include the filing of applicable state tax returns and the payment of the taxes reported on these returns.

DISCUSSION:

Section 301 of The Tax Reform Code of 1971, as amended, ("the Code") 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."[1] Neither the Code nor the regulations define the term "trust," but both define the terms: resident trust and nonresident trust. The Code 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.[2]

The definition for "resident trust" contained in Regulation Section 101.1 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.[3]

Although the Code and regulations contain definitions for only resident trust and nonresident trust, the Pennsylvania Personal Income Tax Guide states that a trust for Pennsylvania Personal Income Tax purposes does not include "Qualified settlement funds and other trusts that are treated as corporations or partnerships for federal income tax purposes."[4]

IRC § 468B provides that even though the tax rate used to determine the applicable tax on the gross income of any designated settlement fund shall be equal to the maximum rate in effect for an estate and trust.[5] The fund shall be treated as a corporation.[6] Therefore, since Taxpayer is treated as a corporation for federal income tax purposes, it is not considered a trust for Pennsylvania Personal Income Tax purposes.

---

[1] 72 P.S. § 7301(w).
[2] 72 P.S. § 7301(s).
[3] 61 Pa. Code § 101.1.
[4] Pennsylvania Personal Income Tax Guide, Chapter 14: Estates, Trusts, and Decedents. "Trust and Settlor – Defined."
[5] IRC § 468B(b)(1).
[6] IRC § 468B(b)(5).