Internal Revenue Service

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Washington, DC 20224

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Person To Contact:
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PLR-103926-09
Date:
July 20, 2009

In re:

LEGEND:

Act =

Agency =

Agreement =

B =

Court =

Entity1 =

Entity2 =

Entity2 Claimants =

Incident =

T =

Z =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Year 1 =

Year 2 =

Year 3 =
Year 4 =

f =

$q = $

$r = $

$t = $

$v = $

w =

$x = $

$y = $

$z = $

Dear

This is in reply to your request for a ruling that $x the Estate of B (Estate) received in Year 3, and the payment Estate received from Agency for the wrongful death of B, are excludable from Estate's gross income under § 104(a)(2) of the Internal Revenue Code. You are the independent executor of Estate.

FACTS

B was one of w individuals killed in Incident. In Year 1, the estates of those killed (including Estate) and their survivors entered into a joint prosecution agreement (JPA) to pursue claims for damages against Entity1 and its officials who were responsible for

Incident. The JPA sets forth how the plaintiffs will divide any amounts they recover in litigation or settlement of their claims.

Initial litigation The estates of those killed and their survivors initially sued Entity1 in Court in Year 1. The causes of action included claims for wrongful death and intentional infliction of emotional distress. As independent executor for Estate, you sought recovery for wrongful death and intentional infliction of emotional distress caused by the death of B. In Year 2, Court granted summary judgment for plaintiffs on the issue of liability. In Year 3, Court awarded the plaintiffs an aggregate recovery of $v for compensatory damages, prejudgment interest, and punitive damages. Estate was awarded an aggregate of $y, $r against T and $q against Z.

Sale of damage award While Court award of damages was on appeal (and no later than Date 2), Estate sold the rights to a portion of its damage award to an investor for an immediate cash payment of $x, plus a graduated rate of return on that amount. Estate received the $x on or about Date 3. Several other plaintiffs also sold portions of their damage awards to the investor.

Legislative settlement Subsequently, on Date 4, Entity2 passed the Act to provide fair compensation to all Entity2 Claimants who have f claims for wrongful death and physical injury (including claims for emotional distress) against Entity1 through a comprehensive settlement of those claims. Upon Entity1's payment to Entity2, the Act voided all prior court proceedings and judgments for f claims by Entity2 Claimants against Entity1 or its officials, and permanently precluded Entity2 Claimants from asserting f claims against Entity1 or its officials. On Date 5, Entity1 and Entity2 entered into the Agreement to resolve all f claims against Entity1. Entity1 then transferred $t to Entity2, which will be paid to claimants covered by the Agreement. Thus, pursuant to the Act, Court award of damages to the plaintiffs was voided and has been vacated.

Agency has established procedures to compensate victims pursuant to the Agreement. In Year 4, Agency paid Estate $z on its claim of wrongful death based on the death of B.

LAW AND ANALYSIS

Section 104(a)(2) provides, in general, that gross income does not include the amount of any damages received (whether by suit or agreement) on account of personal physical injuries or physical sickness.

Section 1.104-1(c) of the Income Tax Regulations provides that the term "damages received (whether by suit or agreement)" means an amount received through prosecution of a legal suit or action based upon tort or tort type rights or through a settlement agreement entered into in lieu of such prosecution.

Section 1605 of the Small Business Job Protection Act of 1996 limits the exclusion from gross income provided by § 104(a)(2) to amounts received on account of personal physical injuries or physical sickness (subject to one exception). In H.R. Conf. Rep. No. 104-737 at 301 (1996), Congress expressed its intent concerning the treatment of wrongful death damages and emotional distress damages attributable to a physical injury:

> [D]amages (other than punitive damages) received on account of a claim of wrongful death continue to be excludable from taxable income as under present law. … Because all damages received on account of physical injury or physical sickness are excludable from gross income, the exclusion from gross income applies to any damages received based on a claim of emotional distress that is attributable to physical injury or physical sickness.

The action Estate brought in Court and the claim Estate filed with Agency each seek recovery of damages for wrongful death. These claims are based in tort under § 1.104-1(c).

The Court granted summary judgment on the issue of liability on Estate's claim of wrongful death and intentional infliction of emotional distress due to the death of B and had awarded $y for compensatory damages, interest, and punitive damages. Estate exchanged its right to recover a portion of the award for an immediate cash payment of $x. That $x takes the place of Court's award. To the extent that the $x represents compensatory damages awarded for wrongful death and associated emotional distress, it is excludable from Estate's income under § 104(a)(2).

Under the Act, any recovery of compensatory damages that Agency awarded Estate is for the wrongful death of B. This wrongful death recovery (as adjusted by the JPA) is excludable from Estate's income under § 104(a)(2).

CONCLUSIONS

Based strictly on the information submitted and the representations made, we conclude that—

1. The amount Estate received from Agency (as adjusted by the JPA) for the wrongful death of B is excludable from Estate's gross income under § 104(a)(2), except for any interest received.

2. The portion of the $x representing amounts received on account of a personal physical injury is excludable from Estate's gross income under § 104(a)(2).

We do not express or imply an opinion on the federal tax consequences of any aspect of these transactions other than those expressed in conclusions 1 and 2, above.

Specifically, we do not express an opinion about what portion, if any, of $x is properly allocable to damages received on account of a personal physical injury. See § 4.02(10) of Rev. Proc. 2009-3, 2009-1 I.R.B. 107, 115. In addition, we do not express any opinion whether Estate's transaction with the investor constituted a sale for federal income tax purposes. *See* § 4.02(1) of Rev. Proc. 2009-3 at 115.

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

The rulings contained in this letter are based upon information and representations that you submitted under penalties of perjury. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

You must attach to any income tax return to which it is relevant a copy of this letter or, if Estate files its returns electronically, a statement providing the date and control number of this letter ruling.

In accordance with the Power of Attorney on file with this office, we are sending a copy of this letter to your authorized representative.

Sincerely,

Michael J. Montemurro
Branch Chief
Office of Associate Chief Counsel
(Income Tax & Accounting)