

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:PSI:B02
PLR-127422-05
Date:
March 21, 2006

X =

EIN:

Trust =
EIN:

D1 =

D2 =

Project =

Agency =

Management Plan =

Agreement =

Dear ,

This responds to a letter dated March 17, 2005, submitted on behalf of X by its authorized representative, requesting rulings under § 677 and § 678 of the Internal Revenue Code.

The information submitted states that X is the developer and operator of Project. Agency is a United States government agency. By Record of Decision and Plan Approval dated D1, Agency approved an amended Plan of Operations for Project. The

Plan of Operations includes a Management Plan to provide for monitoring and mitigation of potential groundwater impacts from Project.

Pursuant to the Record of Decision and Plan Approval, X is required to set aside and invest funds to ensure sufficient funds for implementing Management Plan. In order to satisfy this obligation, X, at Agency's request, created and funded Trust, dated D2. All income, as well as principal of Trust is held to satisfy X's legal obligation to monitor and mitigate potential groundwater impacts from Project.

On D2, X and Agency entered into Agreement to establish additional requirements for administering and updating Trust and Management Plan consistent with the terms of the Record of Decision and Plan Approval.

Trust provides that while X is in existence, distributions from Trust to or at the direction of Agency are to be used exclusively in accordance with the Management Plan and all distributions are subject to the Agreement.

Upon termination of Trust, the remaining Trust assets, if any, are required to be distributed to X, or, if so directed by Agency, directly to a person or entity other than X on behalf of X for use in accordance with the Management Plan and the Agreement.

Trust terminates when the trustee receives written instructions from Agency to terminate Trust.

Trust provides that if X is no longer in existence, at any time during any calendar year, Agency has the unrestricted power to withdraw from Trust all Trust income earned during that year, including capital gain income.

Trust provides that upon termination of Trust, if X is no longer in existence, the remaining Trust corpus and income will be distributed to Agency.

Section 671 provides that where it is specified in §§ 673 through 678 that the grantor or another person shall be treated as the owner of any portion of a trust, there shall be included in computing the taxable income and credits of that person those items of income, deduction, and credits against tax of the trust which are attributable to that portion of the trust to the extent that such items would be taken into account in computing taxable income or credits against the tax of an individual.

Section 677 provides that the grantor shall be treated as the owner of any portion of a trust, whether or not he is treated as such under § 674, whose income without the approval or consent of any adverse party, is, or, in the discretion of the grantor or a nonadverse party, or both, may be distributed to the grantor, or held or accumulated for future distribution to the grantor.

Section 1.677(a)-1(d) of the Income Tax Regulations provides that under § 677 a grantor is, in general, treated as the owner of a portion of a trust whose income is, or in the discretion of the grantor or a nonadverse party, or both, may be applied in discharge of a legal obligation of the grantor.

Under the terms of Trust, all income, as well as principal of Trust is held to satisfy X's legal obligation to monitor and mitigate potential groundwater impacts and upon termination of Trust any remaining assets of Trust will be distributed to X. Accordingly, X is the grantor and the owner of the Trust under § 677 and § 1.677(a)-1(d). X shall include in computing its taxable income and credits all items of income, deduction, and credits against tax of the Trust to the extent that such items would be taken into account in computing taxable income or credits against the tax of X.

Additionally, the letter submitted by your authorized representative on your behalf, requested a ruling that if X is no longer in existence, Agency will be treated as the owner of Trust under § 678. On March 7, 2006, an attorney from this office informed your authorized representative that this office has declined to rule on whether Agency will be treated as the owner of Trust under § 678.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Code. No opinion is expressed on whether any amounts paid by Trust are deductible by X, nor is any opinion expressed on whether any such amounts should be capitalized.

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.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to X's authorized representatives.

Sincerely,

J. Thomas Hines
Chief, Branch 2
Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes