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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9249]

RIN 1545–AR82

Escrow Funds and Other Similar Funds

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the taxation and reporting of income earned on qualified settlement funds and certain other escrow accounts, trusts, and funds, and other related rules. The final regulations affect qualified settlement funds, escrow accounts established in connection with sales of property, disputed ownership funds, and the parties to these escrow accounts, trusts, and funds.

DATES: *Effective Date:* These regulations are effective February 3, 2006.

Applicability Dates: For dates of applicability, see §§ 1.468B–5(c), 1.468B–7(f), and 1.468B–9(j).

FOR FURTHER INFORMATION CONTACT: Richard Shevak or A. Katharine Jacob Kiss, (202) 622–4930 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507(d)) under control number 1545–1631. The collections of information in §§ 1.468B–1(k)(2) and 1.468B–9(c)(2)(ii) are to obtain benefits and the collection of information in § 1.468B–9(g) is mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget.

The estimated annual burden per respondent is .40 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains amendments to 26 CFR part 1 under section 468B of the Internal Revenue Code (Code). This document does not adopt § 1.468B–6 of a notice of proposed rulemaking (REG–209619–93) published in the **Federal Register** on February 1, 1999 (64 FR 4801), relating to the current taxation and reporting of income earned on qualified settlement funds and certain other escrow accounts, trusts, and funds, which is withdrawn and reproposed by a notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**. This document also does not adopt § 1.468B–8 of the notice of proposed rulemaking, which is reserved.

Section 468B was added to the Code by section 1807(a)(7)(A) of the Tax Reform Act of 1986, Public Law 99–514 (100 Stat. 2814), and was amended by section 1018(f) of the Technical and Miscellaneous Revenue Act of 1988, Public Law 100–647 (102 Stat. 3582). Section 468B(g) provides that nothing in any provision of law shall be construed as providing that an escrow account, settlement fund, or similar fund is not subject to current income taxation, and that the Secretary shall prescribe regulations providing for the taxation of such accounts or funds, whether as a grantor trust or otherwise.

On December 23, 1992, final regulations (TD 8459) under section 468B(g) concerning the taxation of qualified settlement funds (QSF) were published in the **Federal Register** (57 FR 60983) (the QSF regulations). The QSF regulations do not address the taxation of other types of escrow accounts, trusts, or funds. The preamble to the QSF regulations states that future regulations would address the income tax treatment of accounts, trusts, or funds other than QSFs, specifically, escrow accounts used in the sale of property and section 1031 qualified escrow accounts.

On February 1, 1999, the IRS and the Treasury Department published a notice of proposed rulemaking (REG–209619–93) in the **Federal Register** (64 FR 4801) regarding the proposed income tax treatment of these other funds. The proposed regulations provide rules for taxing income earned by (1) qualified escrow accounts and qualified trusts used in deferred like-kind exchanges under section 1031, (2) pre-closing escrows used in sales or exchanges of real or personal property, (3) contingent-at-closing escrows established on account of contingencies existing at the closing of certain sales of business or investment property, and (4) disputed ownership funds established under the jurisdiction of a court to hold money or property subject to disputed claims of ownership. Additionally, the proposed regulations provide rules permitting a transferor to a QSF to elect taxation of the QSF as a grantor trust.

Written comments responding to the notice of proposed rulemaking were received. A public hearing was held on May 12, 1999. After consideration of the comments, the proposed regulations are adopted as revised by this Treasury decision.

Explanation of Provisions and Summary of Comments

1. Election To Treat a Qualified Settlement Fund as a Grantor Trust Under § 1.468B–1(k)

The proposed regulations provide that, if there is only one transferor to a qualified settlement fund, the transferor may make an election to treat the qualified settlement fund as a grantor trust, all of which is treated as owned by the transferor (a grantor trust election). The election may be revoked only for compelling circumstances upon consent of the Commissioner by private letter ruling.

Commentators recommended expanding the scope of the grantor trust election by allowing the election even if there are multiple transferors to a qualified settlement fund. Certain commentators suggested that this rule could be limited to situations in which all of the grantors are members of the same consolidated group. These comments were not adopted because they would result in undue complexity. For example, extending the grantor trust election to multiple-transferor trusts would require the allocation of items of income, deduction and credit (including capital gains and losses) among the various transferors. Although § 1.671–3 of the Income Tax Regulations contains

rules for making such allocations, the IRS and the Treasury Department do not believe that these rules address the complex sharing arrangements that may arise in a qualified settlement fund. Moreover, if some, but not all, of the transferors elected grantor trust treatment, another allocation method would be necessary to allocate the items of income, deduction, and credit (including capital gains and losses) between the grantor trust portion of the fund and the qualified settlement fund portion of the fund.

Commentators recommended allowing transferors to make the grantor trust election in taxable years after the taxable year in which the fund is established. This comment was not adopted because allowing a grantor trust election for a taxable year other than the taxable year in which the fund is established gives rise to complex issues regarding the tax treatment of the fund upon conversion to a grantor trust. For example, any deduction claimed by the transferor for amounts contributed to the qualified settlement fund would need to be recaptured. Further, adjustments would be necessary to take into account income previously taxed to the qualified settlement fund and differences in the accounting methods used by the transferor and the fund.

However, the final regulations allow a transferor to a qualified settlement fund to elect grantor trust treatment for the fund's first taxable year and all subsequent years if the fund was established on or before February 3, 2006, and the applicable period of limitations for filing an amended return has not expired for the qualified settlement fund's first and all subsequent taxable years, and for the transferor's corresponding taxable years. To make the grantor trust election, the qualified settlement fund and the transferor must amend all affected income tax returns.

2. Treatment of Section 1031 Qualified Escrow Accounts and Qualified Trusts Under § 1.468B–6

Section 1.468B–6 of the proposed regulations provides rules for the current taxation of income of a qualified escrow account or qualified trust used in a deferred exchange under section 1031. The proposed regulations provide that, in general, the taxpayer (the transferor of the property) is the owner of the assets in a qualified escrow account or qualified trust and must take into account all items of income, deduction, and credit (including capital gains and losses) of the qualified escrow account or qualified trust. However, if, under the facts and circumstances, a qualified intermediary or the transferee has the beneficial use and enjoyment of the assets, then the qualified intermediary or transferee is the owner of the assets in the qualified escrow account or qualified trust and must take into account all items of income, deduction, and credit (including capital gains and losses) of the qualified escrow account or qualified trust. In addition to other relevant facts and circumstances, the proposed regulations list three factors that will be considered in determining whether the qualified intermediary or transferee, rather than the taxpayer, has the beneficial use and enjoyment of assets of a qualified escrow account or qualified trust. The proposed regulations further provide that, if a qualified intermediary or transferee is the owner of the assets transferred, section 7872 may apply if the deferred exchange involves a below-market loan from the taxpayer to the owner.

The comments reflected substantial disagreement on the proper rules for taxing these arrangements. For example, some commentators recommended that the facts and circumstances test be replaced by a per se rule requiring transferors to take into account the trust's or account's income in all cases. Other commentators urged that the ownership factors should apply in all circumstances. Commentators suggested that the rules of § 1.468B–6 should apply to all funds held by qualified intermediaries as well as to funds held in a qualified escrow account or qualified trust, while other commentators argued that the rules should apply only to qualified escrow accounts and qualified trusts. Some commentators agreed that certain of these transactions create below-market loans, and other commentators asserted that the transactions do not create below-market loans.

The IRS and the Treasury Department have concluded that these issues merit further consideration. Therefore, a notice of proposed rulemaking published elsewhere in this issue of the **Federal Register** withdraws that portion of the notice of proposed rulemaking that relates to the current taxation of income of a qualified escrow account or qualified trust used in a deferred exchange under section 1031. This section has been omitted from the final regulations and is published as proposed regulations elsewhere in this issue of the **Federal Register**. The preamble to those proposed regulations more fully discusses the comments received.

3. Pre-Closing Escrows Under § 1.468B–7

Section 1.468B–7 provides rules for the taxation of income earned on certain escrows established in connection with the sale of property, or pre-closing escrows. The proposed regulations require the purchaser to take into account all items of income, deduction, and credit (including capital gains and losses) of the pre-closing escrow. The only comments received with respect to this section relate to reporting obligations of the escrow holder or trustee. Those comments are addressed later in this preamble. The final regulations adopt § 1.468B–7 as proposed with minor changes to improve clarity.

4. Contingent-at-Closing Escrows Under § 1.468B–8

Section 1.468B–8 of the proposed regulations provides rules for taxing the income of a contingent-at-closing escrow, which is an escrow account, trust, or fund established in connection with the sale or exchange of real or personal property to account for contingencies existing at closing. The proposed regulations provide that, in computing taxable income, the purchaser must take into account all items of income, deduction, and credit (including capital gains and losses) of the escrow until the date on which specified events occur or fail to occur (the determination date). Beginning on the determination date, the purchaser and seller must each take into account the income, deductions, and credits of the escrow that correspond to their respective ownership interests in each asset of the escrow.

The IRS and the Treasury Department have concluded that this section requires further consideration. Therefore, this section has been omitted from the final regulations and will be published as separate regulations.

5. Disputed Ownership Funds Under § 1.468B–9

Section 1.468B–9 provides rules for the taxation of a disputed ownership fund (DOF). Under the proposed regulations, a DOF is an escrow account, trust, or fund that is not a QSF and that (1) is established to hold money or property subject to conflicting claims of ownership, (2) is subject to the continuing jurisdiction of a court, and (3) requires approval of the court to pay or distribute money or property to, or on behalf of, a claimant or transferor.

The final regulations specifically exclude bankruptcy estates under title 11 of the United States Code from the

definition of disputed ownership funds to avoid conflict with section 1398, which provides rules for the taxation of bankruptcy estates in cases under chapters 7 and 11 of title 11 involving individual debtors, and section 1399, which provides that no separate taxable entity results from the commencement of a case under title 11 except in a case to which section 1398 applies.

The final regulations also exclude liquidating trusts from the definition of disputed ownership fund, although they may have a similar purpose, because liquidating trusts are taxed as grantor trusts. See § 301.7701–4(d), which provides that a liquidating trust is organized for the primary purpose of liquidating and distributing assets. However, in the case of certain liquidating trusts established in connection with bankruptcy proceedings, it is uncertain who is properly taxable on income earned with respect to assets set aside to satisfy disputed claims of creditors. Therefore, the trustee of a liquidating trust established pursuant to a plan confirmed by the court in a case under title 11 of the United States Code may, in its first taxable year, elect to treat an escrow account, trust, or fund that holds assets of the liquidating trust that are subject to disputed claims as a disputed ownership fund. The trustee makes an election to treat this portion of the liquidating trust as a DOF by attaching an election statement to a timely filed Federal income tax return of the DOF for the taxable year for which the election becomes effective. The trustee may revoke the election only with the Commissioner's consent by private letter ruling. The regulations do not otherwise affect the rules for the taxation of liquidating trusts.

Under the proposed and final regulations, a DOF generally is taxable (1) as a QSF under § 1.468B–2 if all the assets transferred to the fund are passive assets, or (2) as a C corporation in all other cases. The claimants to a DOF also may request a private letter ruling proposing an alternative method of taxation. These final regulations clarify that a DOF holding exclusively passive assets is taxable under § 1.468B–2 as if it were a qualified settlement fund, but is not subject to all of the rules applicable to qualified settlement funds. Additionally, because the final regulations include certain rules that differ from, and apply in lieu of, the rules in § 1.468B–2, the final regulations expressly identify the provisions of § 1.468B–2 that do not apply.

The final regulations generally follow the substantive rules of the proposed regulations, but have been restructured for greater clarity. For example, the final regulations provide separate paragraphs for rules applicable to a transferor that is not a claimant to the DOF as well as rules applicable to a transferor that is a claimant (transferor-claimant).

Unless a grantor trust election is made, the transfer of money or property to a qualified settlement fund generally gives rise to economic performance. In contrast, under both the proposed regulations and the final regulations, the transfer of money or property to a DOF gives rise to economic performance only if the transferor does not claim ownership of any part of the property that is transferred to the DOF (the transferor is not a transferor-claimant). The transfer of property to the DOF is not treated as a transfer to the claimants for economic performance purposes if the transferor continues to claim ownership of some or all of the transferred property. Consistent with this approach, the proposed regulations provide that, if the transferor claims ownership of the transferred property after the transfer to the fund, then the transfer of property to the DOF is not treated as a sale or exchange under section 1001 and the transferor is not taxed on distributions that the transferor receives from the DOF.

The final regulations further provide that a distribution from the DOF to a transferor-claimant is not treated as a sale or exchange under section 1001(a). Distributions from the DOF to claimants other than the transferor-claimant are deemed to be made first to the transferor-claimant and then from the transferor-claimant to another claimant. These rules are intended to put the transferor-claimant in the same position for purposes of determining whether a deduction is allowable with respect to the transfer as it would have been in if the money or property had not been transferred first to a DOF.

A commentator requested that the final regulations exempt court registry funds from the rules for DOFs. The commentator asserted that complying with the DOF rules would impose an undue burden on courts. This comment was not adopted because an exemption for court registry funds would be inconsistent with section 468B(g), which requires current income taxation of escrow accounts, settlement funds, and similar funds. Because court registry funds are similar to escrow accounts and settlement funds, they fall within the plain meaning of the statute. The commentator also requested clarification of whether bail bonds or appellate bonds filed with a court are DOFs. The final regulations include an example to clarify that these types of surety bonds do not create DOFs.

6. Information Reporting Requirements

Generally, §§ 1.468B–6 through 1.468B–8 of the proposed regulations state that an escrow holder (escrow agent, trustee or other person responsible for administering the escrow) must report the income of an escrow account, trust, or fund on a Form 1099 ''in accordance with'' subpart B, Part III, subchapter A, chapter 61, Subtitle F of the Code (currently, sections 6041 through 6050T). Several commentators expressed concern that these provisions expand the existing information reporting obligations in sections 6041 through 6050T.

The proposed regulations were not intended to create new information reporting requirements but merely to alert escrow holders and other responsible persons of the potential obligation to report. To clarify this intent, the final regulations provide that a payor must report to the extent required by sections 6041 through 6050T and these regulations .

Effect on Other Documents

Rev. Rul. 77–230 (1977–2 C.B. 214) is obsolete as of February 3, 2006.

Effective Date

The regulations apply to qualified settlement funds, pre-closing escrows, and disputed ownership funds created after February 3, 2006. A transferor to a qualified settlement fund, however, may make a grantor trust election for a qualified settlement fund created on or before February 3, 2006, if the applicable period of limitations on filing an amended return has not expired for the qualified settlement fund's first taxable year and all subsequent taxable years and for the transferor's corresponding taxable year or years. Additionally, for pre-closing escrows and disputed ownership funds established after August 16, 1986, but before February 3, 2006, the IRS will not challenge a reasonable, consistently applied method of taxation.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Final Regulatory Flexibility Act Analysis

This final regulatory flexibility analysis has been prepared for this Treasury decision under 5 U.S.C. 604. The objective of the regulations is to ensure that the income of certain escrow accounts, trusts, and funds is subject to current taxation by identifying the proper party or parties subject to tax. Section 468B(g) provides the legal basis for the requirements of the regulations. The IRS and the Treasury Department are not aware of any Federal rules that may duplicate, overlap, or conflict with the regulations. An explanation is provided below of the burdens on small entities resulting from the requirements of the regulations. A description also is provided of alternative rules that were considered by the IRS and the Treasury Department but rejected as too burdensome.

1. Grantor Trust Election

Under § 1.468B–1(k), a transferor to a qualified settlement fund may elect to have the qualified settlement fund treated as a grantor trust all of which is owned by the transferor (grantor trust election). The election is available only to a qualified settlement fund established after February 3, 2006. However, a transferor may make a grantor trust election under § 1.468B–1(k) for a qualified settlement fund that was established on or before February 3, 2006, if the applicable period of limitations on filing an amended return has not expired for both the qualified settlement fund's first taxable year and all subsequent taxable years and the transferor's corresponding taxable year or years.

To make a grantor trust election, a transferor must attach a statement to a timely filed (including extensions) Form 1041, ''U.S. Income Tax Return for Estates and Trusts.'' The statement must include the transferor's name, address, taxpayer identification number, and the legend, ''§ 1.468B–1(k) Election.''

Approximately 900 qualified settlement fund returns are filed each year. Only a small number of these returns are filed for newly created qualified settlement funds. Because a grantor trust election may be made only for a qualified settlement fund that has one transferor, the IRS and the Treasury Department believe that a very small number of grantor trust elections will be made each year.

Similarly, the IRS and the Treasury Department believe that a very small number of grantor trust elections will be made for past years. A retroactive grantor trust election may impose an additional burden on a taxpayer because the taxpayer may be required to file amended returns. However, this election is voluntary.

The alternatives to the regulations are (1) to limit the grantor trust election by permitting the elections only for QSFs established on or after the date the final regulations are published, or (2) to eliminate the opportunity to make a grantor trust election by retaining the current rules, which do not permit the election. These alternatives were rejected because they might result in a greater burden on small entities than that imposed by these regulations.

2. Disputed Ownership Funds

Section 1.468B–9(c)(1) provides that a disputed ownership fund is a separate taxable entity.

Section 1.468B–9(g) requires that a transferor provide to the IRS and the administrator of a disputed ownership fund a statement that itemizes the property other than cash transferred to the disputed ownership fund during the calendar year. The statement must indicate the basis and holding period of the property. This information is required to substantiate the transfer and to determine the proper tax consequences of the transfer to the fund and of a transfer of property from the fund to a claimant. To minimize the burden, no statement is required for transfers of cash and any two or more transferors may provide a combined statement. There are no known alternatives to these rules that are less burdensome to small entities and accomplish the purpose of the regulations.

The trustee of a liquidating trust established pursuant to a plan confirmed by the court in a case under title 11 of the United States Code may, in the liquidating trust's first taxable year, elect to treat an escrow account, trust, or fund that holds assets of the liquidating trust that are subject to disputed claims as a disputed ownership fund. The trustee makes an election by attaching an election statement to a timely filed Federal income tax return of the disputed ownership fund for the taxable year for which the election becomes effective. This election is voluntary. There are no known alternatives to this requirement that are less burdensome and accomplish the purpose of the regulations.

The IRS and the Treasury Department estimate that there are approximately 5,000 disputed ownership funds created annually. Many of these funds do not involve small entities.

Drafting Information

The principal authors of these regulations are Richard Shevak and A. Katharine Jacob Kiss of the Office of Associate Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by:

■ a. Removing the entries for ''Section 1.468B'' and ''Sections 1.468B–0 through 1.468B–5.''

■ b. Adding entries for §§ 1.468B–1 through 1.468B–9.

The additions read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.468B–1 also issued under 26 U.S.C. 461(h) and 468B(g).

Section 1.468B–2 also issued under 26 U.S.C. 461(h) and 468B(g).

Section 1.468B–3 also issued under 26 U.S.C. 461(h) and 468B(g).

Section 1.468B–4 also issued under 26 U.S.C. 461(h) and 468B(g).

Section 1.468B–5 also issued under 26 U.S.C. 461(h) and 468B(g).

Section 1.468B–7 also issued under 26 U.S.C. 461(h) and 468B(g).

Section 1.468B–9 also issued under 26 U.S.C. 461(h) and 468B(g). * * *

■ **Par. 2.** Section 1.468B–0 is amended by:

■ a. Revising the introductory text of § 1.468B–0.

■ b. Revising the entries for § 1.468B–1, paragraph (k).

■ c. Adding an entry for § 1.468B–1, paragraph (l).

■ d. Revising the entry for the section heading for § 1.468B–5.

■ e. Adding an entry for § 1.468B–5, paragraph (c).

■ f. Adding entries for §§ 1.468B–6 through 1.468B–9.

The additions and revisions read as follows:

§ 1.468B–0 Table of contents.

This section lists the table of contents for §§ 1.468B–1 through 1.468B–9.

■ **Par. 3.** Section 1.468B–1 is amended by redesignating paragraph (k) as paragraph (l) and adding a new paragraph (k) to read as follows:

§ 1.468B–1 Qualified settlement funds.
* * * * *

(k) *Election to treat a qualified settlement fund as a subpart E trust*—(1) *In general.* If a qualified settlement fund has only one transferor (as defined in paragraph (d)(1) of this section), the transferor may make an election (grantor trust election) to treat the qualified settlement fund as a trust all of which is owned by the transferor under section 671 and the regulations thereunder. A grantor trust election may be made whether or not the qualified settlement fund would be classified, in the absence of paragraph (b) of this section, as a trust all of which is treated as owned by the transferor under section 671 and the regulations thereunder. A grantor trust election may be revoked only for compelling circumstances upon consent of the Commissioner by private letter ruling.

(2) *Manner of making grantor trust election*—(i) *In general.* To make a grantor trust election, a transferor must attach an election statement satisfying the requirements of paragraph (k)(2)(ii) of this section to a timely filed (including extensions) Form 1041, ''U.S. Income Tax Return for Estates and Trusts,'' that the administrator files on behalf of the qualified settlement fund for the taxable year in which the qualified settlement fund is established. However, if a Form 1041 is not otherwise required to be filed (for example, because the provisions of § 1.671–4(b) apply), then the transferor makes a grantor trust election by attaching an election statement satisfying the requirements of paragraph (k)(2)(ii) of this section to a timely filed (including extensions) income tax return of the transferor for the taxable year in which the qualified settlement fund is established. See § 1.468B–5(c)(2) for transition rules.

(ii) *Requirements for election statement.* The election statement must include a statement by the transferor that the transferor will treat the qualified settlement fund as a grantor trust. The election statement must include the transferor's name, address, taxpayer identification number, and the legend, ''§ 1.468B–1(k) Election.'' The election statement and the statement described in § 1.671–4(a) may be combined into a single statement.

(3) *Effect of making the election.* If a grantor trust election is made—

(i) Paragraph (b) of this section, and §§ 1.468B–2, 1.468B–3, and 1.468B–5(a) and (b) do not apply to the qualified settlement fund. However, this section (except for paragraph (b) of this section) and § 1.468B–4 apply to the qualified settlement fund;

(ii) The qualified settlement fund is treated, for Federal income tax purposes, as a trust all of which is treated as owned by the transferor under section 671 and the regulations thereunder;

(iii) The transferor must take into account in computing the transferor's income tax liability all items of income, deduction, and credit (including capital gains and losses) of the qualified settlement fund in accordance with § 1.671–3(a)(1); and

(iv) The reporting obligations imposed by § 1.671–4 on the trustee of a trust apply to the administrator.

* * * * *

■ **Par. 4.** Section 1.468B–5 is amended by revising the section heading and adding paragraph (c) to read as follows:

§ 1.468B–5 Effective dates and transition rules applicable to qualified settlement funds.
* * * * *

(c) *Grantor trust elections under § 1.468B–1(k)*—(1) *In general.* A transferor may make a grantor trust election under § 1.468B–1(k) if the qualified settlement fund is established after February 3, 2006.

(2) *Transition rules.* A transferor may make a grantor trust election under § 1.468B–1(k) for a qualified settlement fund that was established on or before

February 3, 2006, if the applicable period of limitation on filing an amended return has not expired for both the qualified settlement fund's first taxable year and all subsequent taxable years and the transferor's corresponding taxable year or years. A grantor trust election under this paragraph (c)(2) requires that the returns of the qualified settlement fund and the transferor for all affected taxable years are consistent with the grantor trust election. This requirement may be satisfied by timely filed original returns or amended returns filed before the applicable period of limitation expires.

(3) *Qualified settlement funds established by the U.S. government on or before* February 3, 2006. If the U.S. government, or any agency or instrumentality thereof, established a qualified settlement fund on or before February 3, 2006, and the fund would have been classified as a trust all of which is treated as owned by the U.S. government under section 671 and the regulations thereunder without regard to the regulations under section 468B, then the U.S. government is deemed to have made a grantor trust election under § 1.468B–1(k), and the election is applicable for all taxable years of the fund.

■ **Par. 5.** Section 1.468B–6 is added and reserved to read as follows:

§ 1.468B–6 Escrow accounts, trusts, and other funds used in deferred exchanges of like-kind property under section 1031(a)(3). [Reserved]

■ **Par. 6.** Section 1.468B–7 is added to read as follows:

§ 1.468B–7 Pre-closing escrows.

(a) *Scope.* This section provides rules under section 468B(g) for the current taxation of income of a pre-closing escrow.

(b) *Definitions.* For purposes of this section—

(1) A *pre-closing escrow* is an escrow account, trust, or fund—

(i) Established in connection with the sale or exchange of real or personal property;

(ii) Funded with a down payment, earnest money, or similar payment that is deposited into the escrow prior to the sale or exchange of the property;

(iii) Used to secure the obligation of the purchaser to pay the purchase price for the property;

(iv) The assets of which, including any income earned thereon, will be paid to the purchaser or otherwise distributed for the purchaser's benefit when the property is sold or exchanged (for example, by being distributed to the seller as a credit against the purchase price); and

(v) Which is not an escrow account or trust established in connection with a deferred exchange under section 1031(a)(3).

(2) *Purchaser* means, in the case of an exchange, the intended transferee of the property whose obligation to pay the purchase price is secured by the pre-closing escrow;

(3) *Purchase price* means, in the case of an exchange, the required consideration for the property; and

(4) *Administrator* means the escrow agent, escrow holder, trustee, or other person responsible for administering the pre-closing escrow.

(c) *Taxation of pre-closing escrows.* The purchaser must take into account in computing the purchaser's income tax liability all items of income, deduction, and credit (including capital gains and losses) of the pre-closing escrow. In the case of an exchange with a single pre-closing escrow funded by two or more purchasers, each purchaser must take into account in computing the purchaser's income tax liability all items of income, deduction, and credit (including capital gains and losses) earned by the pre-closing escrow with respect to the money or property deposited in the pre-closing escrow by or on behalf of that purchaser.

(d) *Reporting obligations of the administrator.* For each calendar year (or portion thereof) that a pre-closing escrow is in existence, the administrator must report the income of the pre-closing escrow on Form 1099 to the extent required by the information reporting provisions of subpart B, Part III, subchapter A, chapter 61, Subtitle F of the Internal Revenue Code and the regulations thereunder. See § 1.6041–1(f) for rules relating to the amount to be reported when fees, expenses, or commissions owed by a payee to a third party are deducted from a payment.

(e) *Examples.* The provisions of this section may be illustrated by the following examples:

Example 1. P enters into a contract with S for the purchase of residential property owned by S for the price of $200,000. P is required to deposit $10,000 of earnest money into an escrow. At closing, the $10,000 and the interest earned thereon will be credited against the purchase price of the property. The escrow is a pre-closing escrow. P is taxable on the interest earned on the pre-closing escrow prior to closing.

Example 2. X and Y enter into a contract in which X agrees to exchange certain construction equipment for residential property owned by Y. The contract requires X and Y to each deposit $10,000 of earnest money into an escrow. At closing, $10,000 and the interest earned thereon will be paid to X and $10,000 and the interest earned thereon will be paid to Y. The escrow is a pre-closing escrow. X is taxable on the interest earned prior to closing on the $10,000 of funds X deposited in the pre-closing escrow. Similarly, Y is taxable on the interest earned prior to closing on the $10,000 of funds Y deposited in the pre-closing escrow.

(f) *Effective dates*—(1) *In general.* This section applies to pre-closing escrows established after February 3, 2006.

(2) *Transition rule.* With respect to a pre-closing escrow established after August 16, 1986, but on or before February 3, 2006, the Internal Revenue Service will not challenge a reasonable, consistently applied method of taxation for income earned by the escrow or a reasonable, consistently applied method for reporting the income.

■ **Par. 7.** Section 1.468B–8 is added and reserved to read as follows:

§ 1.468B–8 Contingent-at-closing escrows. [Reserved]

■ **Par. 8.** Section 1.468B–9 is added to read as follows:

§ 1.468B–9 Disputed ownership funds.

(a) *Scope.* This section provides rules under section 468B(g) relating to the current taxation of income of a disputed ownership fund.

(b) *Definitions.* For purposes of this section—

(1) *Disputed ownership fund* means an escrow account, trust, or fund that—

(i) Is established to hold money or property subject to conflicting claims of ownership;

(ii) Is subject to the continuing jurisdiction of a court;

(iii) Requires the approval of the court to pay or distribute money or property to, or on behalf of, a claimant, transferor, or transferor-claimant; and

(iv) Is not a qualified settlement fund under § 1.468B–1, a bankruptcy estate (or part thereof) resulting from the commencement of a case under title 11 of the United States Code, or a liquidating trust under § 301.7701–4(d) of this chapter (except as provided in paragraph (c)(2)(ii) of this section);

(2) *Administrator* means a person designated as such by a court having jurisdiction over a disputed ownership fund, however, if no person is designated, the administrator is the escrow agent, escrow holder, trustee, receiver, or other person responsible for administering the fund;

(3) *Claimant* means a person who claims ownership of, in whole or in part, or a legal or equitable interest in, money or property immediately before and immediately after that property is transferred to a disputed ownership fund;

(4) *Court* means a court of law or equity of the United States or of any state (including the District of Columbia), territory, possession, or political subdivision thereof;

(5) *Disputed property* means money or property held in a disputed ownership fund subject to the claimants' conflicting claims of ownership;

(6) *Related person* means any person that is related to a transferor within the meaning of section 267(b) or 707(b)(1);

(7) *Transferor* means, in general, a person that transfers disputed property to a disputed ownership fund, except that—

(i) If disputed property is transferred by an agent, fiduciary, or other person acting in a similar capacity, the transferor is the person on whose behalf the agent, fiduciary, or other person acts; and

(ii) A payor of interest or other income earned by a disputed ownership fund is not a transferor within the meaning of this section (unless the payor is also a claimant);

(8) *Transferor-claimant* means a transferor that claims ownership of, in whole or in part, or a legal or equitable interest in, the disputed property immediately before and immediately after that property is transferred to the disputed ownership fund. Because a transferor-claimant is both a transferor and a claimant, generally the terms *transferor* and *claimant* also include a transferor-claimant. See paragraph (d) of this section for rules applicable only to transferors that are not transferor-claimants and paragraph (e) of this section for rules applicable only to transferors that are also transferor-claimants.

(c) *Taxation of a disputed ownership fund*—(1) *In general.* For Federal income tax purposes, a disputed ownership fund is treated as the owner of all assets that it holds. A disputed ownership fund is treated as a C corporation for purposes of subtitle F of the Internal Revenue Code, and the administrator of the fund must obtain an employer identification number for the fund, make all required income tax and information returns, and deposit all tax payments. Except as otherwise provided in this section, a disputed ownership fund is taxable as—

(i) A C corporation, unless all the assets transferred to the fund by or on behalf of transferors are passive investment assets. For purposes of this section, passive investment assets are assets of the type that generate portfolio income within the meaning of § 1.469–2T(c)(3)(i); or

(ii) A qualified settlement fund, if all the assets transferred to the fund by or on behalf of transferors are passive investment assets. A disputed ownership fund taxable as a qualified settlement fund under this section is subject to all the provisions contained in § 1.468B–2, except that the rules contained in paragraphs (c)(3), (4), and (c)(5)(i) of this section apply in lieu of the rules in § 1.468B–2(b)(1), (d), (e), (f) and (j).

(2) *Exceptions.* (i) The claimants to a disputed ownership fund may submit a private letter ruling request proposing a method of taxation different than the method provided in paragraph (c)(1) of this section.

(ii) The trustee of a liquidating trust established pursuant to a plan confirmed by the court in a case under title 11 of the United States Code may, in the liquidating trust's first taxable year, elect to treat an escrow account, trust, or fund that holds assets of the liquidating trust that are subject to disputed claims as a disputed ownership fund. Pursuant to this election, creditors holding disputed claims are not treated as transferors of the money or property transferred to the disputed ownership fund. A trustee makes the election by attaching a statement to the timely filed Federal income tax return of the disputed ownership fund for the taxable year for which the election becomes effective. The election statement must include a statement that the trustee will treat the escrow account, trust, or fund as a disputed ownership fund and must include a legend, ''§ 1.468B–9(c) Election,'' at the top of the page. The election may be revoked only upon consent of the Commissioner by private letter ruling.

(3) *Property received by the disputed ownership fund*—(i) *Generally excluded from income.* In general, a disputed ownership fund does not include an amount in income on account of a transfer of disputed property to the disputed ownership fund. However, the accrual or receipt of income from the disputed property in a disputed ownership fund is not a transfer of disputed property to the fund. Therefore, a disputed ownership fund must include in income all income received or accrued from the disputed property, including items such as—

(A) Payments to a disputed ownership fund made in compensation for late or delayed transfers of money or property;

(B) Dividends on stock of a transferor (or a related person) held by the fund; and

(C) Interest on debt of a transferor (or a related person) held by the fund.

(ii) *Basis and holding period.* In general, the initial basis of property transferred by, or on behalf of, a transferor to a disputed ownership fund is the fair market value of the property on the date of transfer to the fund, and the fund's holding period begins on the date of the transfer. However, if the transferor is a transferor-claimant, the fund's initial basis in the property is the same as the basis of the transferor-claimant immediately before the transfer to the fund, and the fund=s holding period for the property is determined under section 1223(2).

(4) *Property distributed by the disputed ownership fund*—(i) *Computing gain or loss.* Except in the case of a distribution or deemed distribution described in paragraph (e)(3) of this section, a disputed ownership fund must treat a distribution of disputed property as a sale or exchange of that property for purposes of section 1001(a). In computing gain or loss, the amount realized by the disputed ownership fund is the fair market value of that property on the date of distribution.

(ii) *Denial of deduction.* A disputed ownership fund is not allowed a deduction for a distribution of disputed property or of the net after-tax income earned by the disputed ownership fund made to or on behalf of a transferor or claimant.

(5) *Taxable year and accounting method.* (i) A disputed ownership fund taxable as a C corporation under paragraph (c)(1)(i) of this section may compute taxable income under any accounting method allowable under section 446 and is not subject to the limitations contained in section 448. A disputed ownership fund taxable as a C corporation may use any taxable year allowable under section 441.

(ii) A disputed ownership fund taxable as a qualified settlement fund under paragraph (c)(1)(ii) of this section may compute taxable income under any accounting method allowable under section 446 and may use any taxable year allowable under section 441.

(iii) Appropriate adjustments must be made by a disputed ownership fund or transferors to the fund to prevent the fund and the transferors from taking into account the same item of income, deduction, gain, loss, or credit (including capital gains and losses) more than once or from omitting such items. For example, if a transferor that is not a transferor-claimant uses the cash receipts and disbursements method of accounting and transfers an account receivable to a disputed ownership fund that uses an accrual method of accounting, at the time of the transfer of the account receivable to the disputed ownership fund, the transferor must

include in its gross income the value of the account receivable because, under paragraph (c)(3)(ii) of this section, the disputed ownership fund will take a fair market value basis in the receivable and will not include the fair market value in its income when received from the transferor or when paid by the customer. If the account receivable were transferred to the disputed ownership fund by a transferor-claimant using the cash receipts and disbursements method, however, the disputed ownership fund would take a basis in the receivable equal to the transferor's basis, or $0, and would be required to report the income upon collection of the account.

(6) *Unused carryovers.* Upon the termination of a disputed ownership fund, if the fund has an unused net operating loss carryover under section 172, an unused capital loss carryover under section 1212, or an unused tax credit carryover, or if the fund has, for its last taxable year, deductions in excess of gross income, the claimant to which the fund's net assets are distributable will succeed to and take into account the fund's unused net operating loss carryover, unused capital loss carryover, unused tax credit carryover, or excess of deductions over gross income for the last taxable year of the fund. If the fund's net assets are distributable to more than one claimant, the unused net operating loss carryover, unused capital loss carryover, unused tax credit carryover, or excess of deductions over gross income for the last taxable year must be allocated among the claimants in proportion to the value of the assets distributable to each claimant from the fund. Unused carryovers described in this paragraph (c)(6) are not money or other property for purposes of paragraph (e)(3)(ii) of this section and thus are not deemed transferred to a transferor-claimant before being transferred to the claimants described in this paragraph (c)(6).

(d) *Rules applicable to transferors that are not transferor-claimants.* The rules in this paragraph (d) apply to transferors (as defined in paragraph (b)(7) of this section) that are not transferor-claimants (as defined in paragraph (b)(8) of this section).

(1) *Transfer of property.* A transferor must treat a transfer of property to a disputed ownership fund as a sale or other disposition of that property for purposes of section 1001(a). In computing the gain or loss on the disposition, the amount realized by the transferor is the fair market value of the property on the date the transfer is made to the disputed ownership fund.

(2) *Economic performance*—(i) *In general.* For purposes of section 461(h), if a transferor using an accrual method of accounting has a liability for which economic performance would otherwise occur under § 1.461–4(g) when the transferor makes payment to the claimant or claimants, economic performance occurs with respect to the liability when and to the extent that the transferor makes a transfer to a disputed ownership fund to resolve or satisfy that liability.

(ii) *Obligations of the transferor.* Economic performance does not occur when a transferor using an accrual method of accounting issues to a disputed ownership fund its debt (or provides the debt of a related person). Instead, economic performance occurs as the transferor (or related person) makes principal payments on the debt. Economic performance does not occur when the transferor provides to a disputed ownership fund its obligation (or the obligation of a related person) to provide property or services in the future or to make a payment described in § 1.461–4(g)(1)(ii)(A). Instead, economic performance occurs with respect to such an obligation as property or services are provided or payments are made to the disputed ownership fund or a claimant. With regard to interest on a debt issued or provided to a disputed ownership fund, economic performance occurs as determined under § 1.461–4(e).

(3) *Distributions to transferors*—(i) *In general.* Except as provided in section 111(a) and paragraph (d)(3)(ii) of this section, the transferor must include in gross income any distribution to the transferor (including a deemed distribution described in paragraph (d)(3)(iii) of this section) from the disputed ownership fund. If property is distributed, the amount includible in gross income and the basis in that property are generally the fair market value of the property on the date of distribution.

(ii) *Exception.* A transferor is not required to include in gross income a distribution of money or property that it previously transferred to the disputed ownership fund if the transferor did not take into account, for example, by deduction or capitalization, an amount with respect to the transfer either at the time of the transfer to, or while the money or property was held by, the disputed ownership fund. The transferor's gross income does not include a distribution of money from the disputed ownership fund equal to the net after-tax income earned on money or property transferred to the disputed ownership fund by the transferor while that money or property was held by the fund. Money distributed to a transferor by a disputed ownership fund will be deemed to be distributed first from the money or property transferred to the disputed ownership fund by that transferor, then from the net after-tax income of any money or property transferred to the disputed ownership fund by that transferor, and then from other sources.

(iii) *Deemed distributions.* If a disputed ownership fund makes a distribution of money or property on behalf of a transferor to a person that is not a claimant, the distribution is deemed made by the fund to the transferor. The transferor, in turn, is deemed to make a payment to the actual recipient.

(e) *Rules applicable to transferor-claimants.* The rules in this paragraph (e) apply to transferor-claimants (as defined in paragraph (b)(8) of this section).

(1) *Transfer of property.* A transfer of property by a transferor-claimant to a disputed ownership fund is not a sale or other disposition of the property for purposes of section 1001(a).

(2) *Economic performance*—(i) *In general.* For purposes of section 461(h), if a transferor-claimant using an accrual method of accounting has a liability for which economic performance would otherwise occur under § 1.461–4(g) when the transferor-claimant makes payment to another claimant, economic performance occurs with respect to the liability when and to the extent that the disputed ownership fund transfers money or property to the other claimant to resolve or satisfy that liability.

(ii) *Obligations of the transferor-claimant.* Economic performance does not occur when a disputed ownership fund transfers the debt of a transferor-claimant (or of a person related to the transferor-claimant) to another claimant. Instead, economic performance occurs as principal payments on the debt are made to the other claimant. Economic performance does not occur when a disputed ownership fund transfers to another claimant the obligation of a transferor-claimant (or of a person related to the transferor-claimant) to provide property or services in the future or to make a payment described in § 1.461–4(g)(1)(ii)(A). Instead, economic performance occurs with respect to such an obligation as property or services are provided or payments are made to the other claimant. With regard to interest on a debt issued or provided to a disputed ownership fund, economic performance occurs as determined under § 1.461–4(e).

(3) *Distributions to transferor-claimants*—(i) *In general.* The gross income of a transferor-claimant does not include a distribution to the transferor-claimant (including a deemed distribution described in paragraph (e)(3)(ii) of this section) of money or property from a disputed ownership fund that the transferor-claimant previously transferred to the fund, or the net after-tax income earned on that money or property while it was held by the fund. If such property is distributed to the transferor-claimant by the disputed ownership fund, then the transferor-claimant's basis in the property is the same as the disputed ownership fund's basis in the property immediately before the distribution.

(ii) *Deemed distributions.* If a disputed ownership fund makes a distribution of money or property to a claimant or makes a distribution of money or property on behalf of a transferor-claimant to a person that is not a claimant, the distribution is deemed made by the fund to the transferor-claimant. The transferor-claimant, in turn, is deemed to make a payment to the actual recipient.

(f) *Distributions to claimants other than transferor-claimants.* Whether a claimant other than a transferor-claimant must include in gross income a distribution of money or property from a disputed ownership fund generally is determined by reference to the claim in respect of which the distribution is made.

(g) *Statement to the disputed ownership fund and the Internal Revenue Service with respect to transfers of property other than cash*—(1) *In general.* By February 15 of the year following each calendar year in which a transferor (or other person acting on behalf of a transferor) makes a transfer of property other than cash to a disputed ownership fund, the transferor must provide a statement to the administrator of the fund setting forth the information described in paragraph (g)(3) of this section. The transferor must attach a copy of this statement to its return for the taxable year of transfer.

(2) *Combined statements.* If a disputed ownership fund has more than one transferor, any two or more transferors may provide a combined statement to the administrator. If a combined statement is used, each transferor must attach a copy of the combined statement to its return and maintain with its books and records a schedule describing each asset that the transferor transferred to the disputed ownership fund.

(3) *Information required on the statement.* The statement required by paragraph (g)(1) of this section must include the following information—

(i) A legend, ''§ 1.468B–9 Statement,'' at the top of the first page;

(ii) The transferor's name, address, and taxpayer identification number;

(iii) The disputed ownership fund's name, address, and employer identification number;

(iv) A statement declaring whether the transferor is a transferor-claimant;

(v) The date of each transfer;

(vi) A description of the property (other than cash) transferred; and

(vii) The disputed ownership fund's basis in the property and holding period on the date of transfer as determined under paragraph (c)(3)(ii) of this section.

(h) *Examples.* The following examples illustrate the rules of this section:

Example 1. (i) X Corporation petitions the United States Tax Court in 2006 for a redetermination of its tax liability for the 2003 taxable year. In 2006, the Tax Court determines that X Corporation is liable for an income tax deficiency for the 2003 taxable year. X Corporation files an appellate bond in accordance with section 7485(a) and files a notice of appeal with the appropriate United States Court of Appeals. In 2006, the Court of Appeals affirms the decision of the Tax Court and the United States Supreme Court denies X Corporation's petition for a writ of certiorari.

(ii) The appellate bond that X Corporation files with the court for the purpose of staying assessment and collection of deficiencies pending appeal is not an escrow account, trust or fund established to hold property subject to conflicting claims of ownership. Although X Corporation was found liable for an income tax deficiency, ownership of the appellate bond is not disputed. Rather, the bond serves as security for a disputed liability. Therefore, the bond is not a disputed ownership fund.

Example 2. (i) The facts are the same as *Example 1*, except that X Corporation deposits United States Treasury bonds with the Tax Court in accordance with section 7845(c)(2) and 31 U.S.C. 9303.

(ii) The deposit of United States Treasury bonds with the court for the purpose of staying assessment and collection of deficiencies while X Corporation prosecutes an appeal does not create a disputed ownership fund because ownership of the bonds is not disputed.

Example 3. (i) Prior to A's death, A was the insured under a life insurance policy issued by X, an insurance company. X uses an accrual method of accounting. Both A's current spouse and A's former spouse claim to be the beneficiary under the policy and entitled to the policy proceeds ($1 million). In 2005, X files an interpleader action and deposits $1 million into the registry of the court. On June 1, 2006, a final determination is made that A's current spouse is the beneficiary under the policy and entitled to the money held in the registry of the court. The interest earned on the registry account is $12,000. The money in the registry account is distributed to A's current spouse.

(ii) The money held in the registry of the court consisting of the policy proceeds and the earnings thereon are a disputed ownership fund taxable as if it were a qualified settlement fund. See paragraphs (b)(1) and (c)(1)(ii) of this section. The fund's gross income does not include the $1 million transferred to the fund by X, however, the $12,000 interest is included in the fund's gross income in accordance with its method of accounting. See paragraph (c)(3)(i) of this section. Under paragraph (c)(4)(ii) of this section, the fund is not allowed a deduction for a distribution to A's current spouse of the $1 million or the interest income earned by the fund.

(iii) X is a transferor that is not a transferor-claimant. See paragraphs (b)(7) and (b)(8) of this section.

(iv) Whether A's current spouse must include in income the $1 million insurance proceeds and the interest received from the fund is determined under other provisions of the Internal Revenue Code. See paragraph (f) of this section.

Example 4. (i) Corporation B and unrelated individual C claim ownership of certain rental property. B uses an accrual method of accounting. The rental property is property used in a trade or business. B claims to have purchased the property from C's father. However, C asserts that the purported sale to B was ineffective and that C acquired ownership of the property through intestate succession upon the death of C's father. For several years, B has maintained and received the rent from the property.

(ii) Pending the resolution of the title dispute between B and C, the title to the rental property is transferred to a court-supervised registry account on February 1, 2005. On that date the court appoints R as receiver for the property. R collects the rent earned on the property and hires employees necessary for the maintenance of the property. The rents paid to R cannot be distributed to B or C without the court's approval.

(iii) On June 1, 2006, the court makes a final determination that the rental property is owned by C. The court orders C to refund to B the purchase price paid by B to C's father plus interest on that amount from February 1, 2005. The court also orders that a distribution be made to C of all funds held in the court registry consisting of the rent collected by R and the income earned thereon. C takes title to the rental property.

(iv) The rental property and the funds held by the court registry are a disputed ownership fund under paragraph (b)(1) of this section. The fund is taxable as if it were a C corporation because the rental property is not a passive investment asset within the meaning of paragraph (c)(1)(i) of this section.

(v) The fund's gross income does not include the value of the rental property transferred to the fund by B. See paragraph (c)(3)(i) of this section. Under paragraph (c)(3)(ii) of this section, the fund's initial basis in the property is the same as B's adjusted basis immediately before the transfer to the fund and the fund's holding

period is determined under section 1223(2). The fund's gross income includes the rents collected by R and any income earned thereon. For the period between February 1, 2005, and June 1, 2006, the fund may be allowed deductions for depreciation and for the costs of maintenance of the property because the fund is treated as owning the property during this period. See sections 162, 167, and 168. Under paragraph (c)(4)(ii) of this section, the fund may not deduct the distribution to C of the property, or the rents (or any income earned thereon) collected from the property while the fund holds the property. No gain or loss is recognized by the fund from this distribution or from the fund's transfer of the rental property to C pursuant to the court's determination that C owns the property. See paragraphs (c)(4)(i) and (e)(3) of this section.

(vi) B is the transferor to the fund. Under paragraphs (b)(8) and (e)(1) of this section, B is a transferor-claimant and does not recognize gain or loss under section 1001(a) on transfer of the property to the disputed ownership fund. The money and property distributed from the fund to C is deemed to be distributed first to B and then transferred from B to C. See paragraph (e)(3)(ii) of this section. Under paragraph (e)(2)(i) of this section, economic performance occurs when the disputed ownership fund transfers the property and any earnings thereon to C. The income tax consequences of the deemed transfer from B to C as well as the income tax consequences of C's refund to B of the purchase price paid to C's father and interest thereon are determined under other provisions of the Internal Revenue Code.

(i) [Reserved]

(j) *Effective dates*—(1) *In general.* This section applies to disputed ownership funds established after February 3, 2006.

(2) *Transition rule.* With respect to a disputed ownership fund established after August 16, 1986, but on or before February 3, 2006, the Internal Revenue Service will not challenge a reasonable, consistently applied method of taxation for income earned by the fund, transfers to the fund, and distributions made by the fund.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 9.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 10.** In § 602.101, paragraph (b) is amended by adding entries in numerical order to read, in part, as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described			Current OMB control No.
*	*	*	*
1.468B–1			1545–1631
1.468B–9			1545–1631
*	*	*	*

Approved: January 30, 2006.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Eric Solomon,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 06–1037 Filed 2–3–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 0

[A.G. Order No. 2800–2006]

Organization; Office of the Deputy Attorney General, Office of the Associate Attorney General

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This rule amends the regulations that describe the structure, functions, and responsibilities of the Offices of the Deputy Attorney General and Associate Attorney General, United States Department of Justice.

EFFECTIVE DATE: February 7, 2006.

FOR FURTHER INFORMATION CONTACT: Louis DeFalaise, Director, Office of Attorney Recruitment and Management, U.S. Department of Justice, Washington, DC 20530, (202) 514–8900.

SUPPLEMENTARY INFORMATION: This rule expands and clarifies the list of personnel- and recruitment-related responsibilities vested in the Deputy Attorney General, expands and clarifies which of these responsibilities he may redelegate to officials within the Department of Justice, and deletes an outdated reference to General Schedule grades 16 through 18. The rule also clarifies the list of personnel-related responsibilities vested in the Associate Attorney General and updates the title of the Department official to whom he may redelegate this authority. In addition, the rule reserves certain personnel administration authorities to the Attorney General.

Administrative Procedure Act

This rule relates to matters of agency management or personnel, and is therefore exempt from the requirements of prior notice and comment and a 30-day delay in the effective date. *See* 5 U.S.C. 553(a)(2).

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this rule and, by approving it, certifies that this regulation will not have a significant economic impact on a substantial number of small entities because it pertains to personnel and administrative matters affecting the Department. Further, a Regulatory Flexibility Analysis was not required to be prepared for this final rule because the Department was not required to publish a general notice of proposed rulemaking for this matter.

Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866, Regulatory Planning and Review, § 1(b), Principles of Regulation. This rule is limited to agency organization, management and personnel as described by Executive Order 12866 § 3(d)(3) and, therefore, is not a ''regulation'' or ''rule'' as defined by that Executive Order. Accordingly, this rule has not been reviewed by the Office of Management and Budget.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal government, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501–1571.