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July 28, 2003

Internal Revenue Service
ATTN:CC:PA:T
Associate Chief Counsel
Income Tax & Accounting
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

Dear Sir or Madam:

Michael J. Quilling, Receiver of the Estate of All Funds on Deposit in Account No. 0006698729075 in the Name of MM ACMC Banque de Commerce, Inc. at Nationsbank consisting of $18,756,420.97, More or Less (EIN 47-6236373), requests a ruling on the taxability of interest earned on funds seized under the forfeiture laws while in the possession and control of the U. S. Marshals Service.

A. STATEMENT OF FACTS

This is a request for a ruling on the proper treatment of the interest income on specific funds obtained through a seizure warrant by the Federal Bureau of Investigation. While in the possession of the Federal Government, and under the supervision of the Federal District Court for the Western District of North Carolina, interest was paid on the funds held in the Seized Assets Forfeiture Fund. The seized funds, including the interest earned, were turned over after a Court Order appointing a receiver was entered, thereby establishing a Federal Receivership Estate. The details of the turnover, as well as the establishment of the Receivership, and the method of the turnover of the funds are detailed below.

The background information is provided to assist in rapid determination as to the custody and control of the funds, and the proper treatment of the interest earned on the funds while in the possession of the Federal Government.

Description of Taxpayer:

The taxpayer information is as follows:

Michael J. Quilling, Receiver of the Estate of All Funds on deposit
in account number 0006698729075 in the Name of MM ACMC
Banque de Commerce, Inc. at Nationsbank consisting of $18,756,420.97,
More or Less
2001 Bryan Street, Suite 1800, Dallas, Texas 75201
Telephone: (214) 871-2100
Facsimile: (214) 871-2111

The taxpayer's EIN is 47-6236373

The taxpayer's representatives are:

Mary C. Vance, Esq.
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Telephone: (214) 880-1847
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The taxpayer making this request is a Federal Receivership. The Receivership was established on October 11, 2001 by the United States District Court for the Western District of North Carolina. A copy of the Order is attached as Exhibit "1." Michael J. Quilling was appointed as Receiver over funds held by the U.S. Marshals Service on October 29, 2001. A copy of the Order appointing Michael J. Quilling is attached as Exhibit "2." This receivership, under the name Michael J. Quilling Receiver for funds in the name of MM ACMC Banque de Commerce, Inc. was given the EIN 47-6236373 on or about February 28, 2002.

As detailed below, the funds were the subject of the collective seizures known as FBI seizure #3140-1999-F-112. The funds were in bank account 0006698729075 in the name of MM ACMC Banque de Commerce, Inc. Subsequent to the seizure, the U.S. Marshals Service placed the funds in the Seized Assets Forfeiture Fund under Case No. 99-FBI-003280.

Through Mr. Quilling's efforts, a determination is being made as to the proper distribution of the funds to the claimants. Subsequent to this determination, and after a final Court hearing and entry of appropriate orders, the funds will be disbursed to the claimants and the receivership will be closed.

The taxpayer requests expedited handling of this request in order to facilitate distribution of the funds to the victims at the earliest possible time. On October 11, 2002, the Federal District Court for the Western District of North Carolina entered an order providing that a reserve in the amount of $1,700,000.00 be established by the Receiver to cover the tax exposure and that no distribution of the funds in the reserve will be made until the taxability issue is determined. This order was entered on the Motion of the Receiver, immediately after it came to the Receiver's attention that the tax consequences of a distribution could be devastating to the Estate and its claimants. A copy of the Order is attached as Exhibit "3."

Most of the funds were seized in 1998. The Government retained the funds for three years before the Receivership was established, and an additional year passed before all of the funds were turned over to the Receiver. The Claimants have been deprived of their funds during this time, and have suffered all the attendant financial difficulties for far too long.[1] Many claimants have substantial sums at risk, and their ability to meet their financial obligations continues to be damaged

[1] The Vasquez family was on the verge of losing their home as a result of this protracted "seizure." They were forced to intervene in the lawsuit which culminated in this Receivership.

exponentially with the passage of time. The Receiver, therefore, requests expedited handling of this request in order to proceed with the administration and distribution of this Estate.

The Business Operations:

The original entities, which individually and collectively have been the focus of the court orders and proceedings, were known as Sterling Management Services, Inc., Sterling Asset Services, Ltd., and MM ACMC Banque de Commerce, Inc. These entities were set up by several individuals; the primary two being Frederick J. Gilliland and August Christian Mohr.

Through these entities, various bank accounts were opened and numerous individuals and entities were induced, persuaded, and enticed to invest millions of dollars, which were deposited into these accounts. A summary of the known funds transfers is attached as Exhibit "4."

The investment scheme purported to invest the funds in Medium Term Notes ("MTN'S"), which promised to pay an exaggerated rate of return. The rate promised was false and misleading. The scheme was in fact similar to a "Ponzi" scheme, and did not attempt or succeed in investing monies and earning the high rates of returns as promised.

The individuals and entities were able to operate this scheme from April, 1998 until December 4, 1998 when a seizure warrant was obtained in the United States District Court. The seizure warrant resulted in the recovery of approximately $18,823,635.73 on December 12, 1998. Subsequent to the seizure, the funds were placed in the Seized Assets Forfeiture Fund under the custody and control of the U. S. Marshals Service.

The FBI continued to investigate the operation of the entities, and additional seizures of funds were ordered by the District Court resulting in recovery of approximately $32,134.96 on May 9, 2000, and $6,982.20 on October 10, 2000. These funds were placed with the original funds seized, in the Seized Assets Forfeiture Fund under the custody and control of the U. S. Marshals Service.

The funds remained in the sole custody and control of the U.S. Marshals service from that time forward pending further orders from the District Court.

On May 21, 2001, George and Delores Rollar filed a complaint in the U.S. District Court for the Western District of North Carolina (Case No. 3:01CV205-MCK) for return of approximately $12,500,000.00 of seized funds. This represented funds invested by the Rollars at approximately the time the scheme was starting. A copy of the Complaint is attached as Exhibit "5."

On June 15, 2001, William Brafford of the U.S. Attorney's Office filed a Motion to Appoint an Interim Receiver (attached as Exhibit "6") in the proceeding which in part stated:

> Based upon information presented in the sealed affidavit in this Case and other information known to the FBI and IRS from a pending criminal investigation, there is probable cause to believe that the Seized Funds are subject to forfeiture as proceeds of mail and wire fraud and money laundering from a large-scale "Ponzi" investment scheme. However, the government's position is that the Seized Funds should be returned to victims of that scheme through a receivership process under court supervision. The government has exercised its forfeiture rights in this matter temporarily for the purpose of securing the Seized Funds for restitution to the victims.

The Federal Government's Motion went on to state that the Federal Government could not return the funds to MM ACMC Banque de Commerce, Inc. because of its inactive status as a corporation and because the individual who controlled MM ACMC Banque de Commerce, Inc. signed a disclaimer of interest in the funds. The Federal Government stated that there were claims in excess of the amount of funds seized and neither the Federal Government nor the Court had the expertise or resources to handle the claims process. As previously stated, on October 11, 2001, the Court entered a Consent Order under which the parties agreed to the appointment of a receiver. On October 29, 2001 the Order Appointing Receiver was entered following a hearing, and Michael J. Quilling was appointed as receiver.

An important aspect of the appointment is that Mr. Quilling is not the Receiver for any of the

individuals, or any of the entities involved in this matter. Mr. Quilling is the Receiver only for the seized funds which were turned over to him by the U.S. Marshals Service following his appointment.

Paragraph Eight of the Consent Order provides that the Federal Government, as a stakeholder, is deemed to have duly invoked the interpleader pursuant to 28 U.S.C. Section 1335 and Rule 22 of the Federal Rules of Civil Procedure with regard to the seized funds. Paragraph Nine of the Consent Order dismisses the complaint against the Federal Government once the seized funds have been finally distributed by Order of the Court.

The Receiver is charged with a fiduciary duty to return funds to the claimants in such a manner as to maximize the assets of the receivership and in the most efficient manner possible. Furthermore, the Receiver is bound by the parameters of 31 U.S.C. Section 3713 which imposes personal liability on the Receiver for unpaid government claims, and cannot make a distribution to claimants without a ruling as to the taxability of such a distribution.

Facts Relating to the Transaction:

The Receiver had funds turned over to him by the U. S. Marshals Service pursuant to Court Order on several separate occasions. The first turnover was on or about November 7, 2001 and was in the amount of $100,000.00. The funds were ordered to be turned over to the Receiver for two purposes – first, to make payment to a claimant in the amount of $89,987.50; and second, to establish the Receivership Estate's bank and money market accounts.

The second turnover was on or about December 4, 2001 in the amount of $1,250,000.00. The Order for turnover of these funds stated that the distribution was made for the sole purpose of having the Receiver make payment of $1,250,000.00 to specific claimants, the Rollars. The payment was made on or about December 7, 2001 in the amount of $1,250,000.00 to the Rollars.

Starting with calendar year 2002, the Receiver received additional Court-ordered turnovers of funds from the U.S. Marshals Service for payment of specified amounts to claimants, payment

of administrative costs of the Receivership, banking fees, legal fees, and other expenses. On or about September 4, 2002, the Court Ordered turnover of all remaining funds held by the U.S. Marshals Service to the Receiver, which amounted to approximately $18,982,691.10. The interest issue arose for the first time with this final turnover.

Subsequent to this final turnover, which was the balance of funds held by the U.S. Marshals Service, the Receiver received a voucher form from the U.S. Marshals Service that detailed the actual original amounts seized by the FBI, the interest earned on the funds in the custody and control of the U.S. Marshals Service, and the total amount turned over to the Receiver. A copy of the voucher is attached as Exhibit "7." This form, which does not appear to have been filed with any regulatory agency, indicates that the U.S. Marshals Service received approximately $2,416,732.19 in interest income from 1999 through 2002 on the funds in their possession. The U.S. Marshals Service has not issued a Form 1099, and the Receiver has not received a Form 1099 from any entity with respect to the interest. The Receiver has not had any other notification that the interest would be taxable to the estate.

Since this final turnover, the Receiver has devoted significant time and effort to determine the claimants and the proper amounts of each claim to begin the distribution process. The Receiver filed a motion in Court to approve a specialized method of calculation to determine the appropriate amount of distribution for an interim distribution, and to determine the taxability of the amounts turned over to the Receiver from the U.S. Marshals Service. In that regard, the Receiver met with an IRS representative in Greensboro, NC, and was advised that the monies received appear not to be taxable to the Receiver, but a more formal request was necessary for a final determination. The Receiver was then advised by the IRS in Greensboro, NC, to make this request for a private letter ruling to finalize the tax treatment of the interest income, both with respect to the Receivership and the claimants.

A summary of the flow of funds in these transactions places the funds in the complete control and custody of the U. S. Marshals Service from the date of seizure by the FBI in 1998 until their turnover to the Receiver incrementally in 2001 and 2002. The Receivership Estate was not legally established until October 11, 2001, and the Receiver was not appointed until October 29, 2001. The Receivership did not receive funds except as directed and ordered by the Court, which controlled how much was turned over and how the Receiver would disburse the funds for the 2001 transactions. The 2002 transactions include both Court-approved claimant payments and administrative expense payments. The balance of funds now held by the Receiver in the tax reserve will not be ordered disbursed by the Court until the Receiver has a final determination of the taxability of the interest.

It should be noted that all records available to the FBI and Receiver indicate the businesses and individuals who were responsible for this scheme appear to have properly accounted for any interest income, and filed tax returns for all years prior to and including the year of the funds seizure, and no outstanding tax is due prior to the seizure taking place.

B. RULING REQUESTED

The Receiver respectfully requests a ruling that the interest earned on the funds while in the dominion and control of the U.S. Marshals Service is not income to the Receivership Estate or to the Claimants, under Section 61 of the Internal Revenue Code of 1986.[2] **The Receiver is not seeking a ruling that the interest is income to the government or any agency thereof.**

C. STATEMENT OF THE LAW

1. Tax Law

26 U.S.C. Section 61. Gross Income Defined

(a) General definition.-Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items:

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[2] All references to the "Code" refer to the Internal Revenue Code of 1986.

(1) Compensation for services, including fees, commissions, fringe benefits, and similar items;

(2) Gross income derived from business;

(3) Gains derived from dealings in property;

(4) **Interest**;

(5) Rents;

(6) Royalties;

(7) Dividends;

(8) Alimony and separate maintenance payments;

(9) Annuities;

(10) Income from life insurance and endowment contracts;

(11) Pensions;

(12) Income from discharge of indebtedness;

(13) Distributive share of partnership gross income;

(14) Income in respect of a decedent; and

(15) Income from an interest in an estate or trust.

26 U.S.C. Section 6151. Time and place for paying tax shown on returns

(a) General Rule.--Except as otherwise provided in this subchapter, when a return of a tax is required under this title or regulations, the person required to make such return shall, without assessment or notice and demand from the Secretary, pay such tax.

26 U.S.C. Section 6012. Persons required to make returns of income

(a) General rule.–Returns with respect to income taxes under subtitle A shall be made by the following:

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(b) Returns made by fiduciaries and receivers.--

(3) Receivers, trustees, and assignees for corporations.--

In a case where a receiver, trustee in a case under title 11 of the United States Code, or assignee, by order of a court of competent jurisdiction, by operation of law or otherwise, has possession of or holds title to all or substantially all of the property or business of a corporation, whether or not such property or business is being operated, such receiver, trustee, or assignee shall make the return of income for such corporation in the same manner and form as corporations are required to make such returns.

(4) Returns of estates and trusts.–Returns of an estate, a trust, or an estate of an individual under Chapter 7 or 11 of Title 11 of the United States Code shall be made by the fiduciary thereof.

31 U.S.C. Section 3713. Priority of Government Claims

(a)(1) A claim of the United States Government shall be paid first when-

(A) a person indebted to the Government is insolvent and -

(i) the debtor is without enough property to pay all debts makes a voluntary assignment of property;

(ii) property of the debtor, if absent, is attached; or

(iii) an act of bankruptcy is committed; or

(B) the estate of a deceased debtor, in the custody of the executor or administrator, is not enough to pay all debts of the debtor.

(2) This subsection does not apply to a case under title 11.

(b) A representative of a person or an estate (except a trustee acting under title 11) paying any part of a debt of the person or estate before paying a claim of the Government is liable to the extent of the payment for unpaid claims of the Government.

2. Overview of Forfeiture Law

An overview of the forfeiture statutes and the treatment of interest in forfeiture cases will be helpful to the analysis of this matter.

18 U.S.C. Sections 981 and 983 provide for forfeiture of property which has been involved in certain criminal transactions or which represents proceeds or is traceable to the proceeds of certain criminal activity. The criminal activity referred to in the statutes is not limited to crimes involving

controlled substances but includes financial crimes, wire and mail fraud, telemarketing fraud and health care fraud among others. Section 981 provides for civil forfeitures and Section 983 provides for criminal forfeitures.[3]

Depending upon which agency makes the seizure, the proceeds are kept in the forfeiture fund set up for the Department of the Treasury, or the forfeiture fund set up for the Department of Justice. 31 U.S.C. Sec. 9703 established the Department of Treasury Forfeiture Fund. Section 9703(e) provides that funds which are not currently needed may be kept on deposit or invested in obligations of, or obligations guaranteed by, the United States.

28 U.S.C. Section 524 established the Department of Justice Assets Forfeiture Fund. Section 524(c)(5) provides that funds which are not currently needed may be kept on deposit or invested in obligations of, or obligations guaranteed by, the United States. Section 524(d)(5) provides that for purposes of federal income, estate, and gift taxes, property placed in the fund is treated as a gift or devise to, or for the use of the United States. Statutorily, all right, title, and interest in the property vests in the United States upon commission of the act giving rise to the forfeiture. 18 U.S.C. Sec. 981(f). This is known as the relation-back doctrine.

The forfeiture statutes provide that the Attorney General, Secretary of the Treasury or the Postal Department can transfer forfeited property under such terms and conditions as he may determine as restoration to any victim of the offense giving rise to the forfeiture. 18 U.S.C. Section 981(e)(6).

3. Pre-CAFRA Treatment of Interest in Forfeiture Cases

Until the Civil Asset Forfeiture Reform Act (CAFRA) became effective for seizures occurring after August 23, 2000, sovereign immunity prevented claimants from recovering interest

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[3] Clearly, there was no criminal forfeiture in this case. It is questionable whether there was actually a civil forfeiture. However, it is the government's position that there was a civil forfeiture and we adopt their position.

in forfeiture cases. *Library of Congress v. Shaw*, 478 U.S. 310 (1986). Prior to CAFRA, only the Sixth and Ninth Circuits permitted the payment of "interest-like" payments to claimants in forfeiture cases; however, the payments were referred to as part of the "res," not as interest payments. *United States v. $133,735.30 seized from U.S. Bancorp Brokerage Account No. 32130630*, 139 F.3d 729,732 (9th Cir. 1998).

In similar concessions to the victims, imputed interest was awarded in cases where the government did not invest the funds as a way of making the government relinquish any benefit it obtained from possession of the funds. *United States v. $277,000 U.S. Currency*, 69 F.3d 1491 (9th Cir. 1995). The Courts again reasoned that the "imputed interest" was not interest per se; it was part of the "res" that the government had no right to forfeit. *United States v. $515,060.42 in United States Currency*, 152 F.3d 491 (6th Cir. 1998); *United States v. 1980 Lear Jet, Model 35A, Serial Number 27*, 38 F.3d 398 (9th Cir. 1994).

Thus, even in cases where "interest-like" payments were made, the Courts have ruled that these payments are part of the "res." In this case, the claimants will not recover all of their investment in the "res" and will certainly not recover any additional funds that could be considered income.

4. Treatment of Interest Under CAFRA[4]

The 2000 revisions to the forfeiture statutes reflect Congressional concerns for financial losses to claimants and owners of seized property. The massive revision to the statutes was the result of a Congressional inquiry into abuses of forfeiture law in which innocent victims were deprived of their property by attempts to increase the coffers of law enforcement agencies through forfeitures. H.R. Rep. 105-358 I, 105th Cong., 1st Sess. 1997. 1997 W.L. 677201.

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[4] CAFRA resulted in the amendment of 18 U.S.C. Sect. 981, 982 and 983 as well as 28 U.S.C. Sections 2465 and 2680. CAFRA became effective for seizures occurring after August 23, 2000. The seizures in this case predated CAFRA except the final seizure in the amount of $6,982.20.

CAFRA mandated the payment of interest or imputed interest by the government. 28 U.S.C. Section 2465 was amended providing that a successful claimant shall recover from the government post-judgment interest on forfeited property. In cases of seized currency or negotiable instruments, the claimant is entitled to any interest actually earned by the government on seized currency from the date of seizure. In cases where the government did not invest the currency, the government must pay imputed interest at the thirty-day Treasury bill rate in effect. 28 U.S.C. Sections 2465(b)(1)(i) and 2465(b)(1)(ii).

The legislative history of CAFRA contains very little discussion of the revision of Sec. 2465 to allow the payment of interest to the owners of seized property, but what little legislative history exists, indicates the revision was made to balance the playing field between the victims and the government.

> "Under current law even if a property owner prevails in a forfeiture action, he may receive no interest for the time period in which he lost use of his property. (footnote omitted) In cases where money or negotiable instruments were seized, or money is awarded a property owner, this is manifestly unfair." H.R. Rep. 186-192, 106th Cong., 1st Sess. 1999, p.19.

Finally, prior to CAFRA, sovereign immunity barred any claims against the government for damage or loss of seized property. CAFRA amended 28 U.S.C. Section 2680(c) to provide that successful claimants can now sue under the Federal Tort Claims Act for injury or loss of property while in the custody of a law enforcement officer as a result of a seizure or forfeiture. These revisions reflect Congressional concern for the victims' rights. This explicit concern for the rights of the victims is the backdrop against which this request for ruling should be considered.

D. ANALYSIS

1. **The Interest Allocated to the Seized Funds is Not Income to the Receiver or the Claimants Within the Meaning of 26 U.S.C. Section 61 of the Internal Revenue Code**

There are a multitude of practical considerations that enter into the question of whether the interest is income to the Receivership Estate or the victims. Section 61 of the Code is only the beginning of the inquiry. The Receiver and the victims find themselves in a situation which is unique.

First, the reality of the situation is that the investors/claimants will never recover their original investment, much less be compensated for the loss of the use of their funds or receive anything that could be considered "income" for purposes of Section 61 of the Code as it has been interpreted by the Courts. Returning funds to the victims will only partially compensate them for the loss of their funds for a period of five years.

Second, income is taxed to the taxpayer who had dominion and control of the funds during the taxable period in which the income was earned.[5] The Receiver was not appointed at the time the interest accrued on the funds and clearly did not have dominion and control of the funds during the years that the interest accrued. Under the relation-back doctrine, which is a legal fiction established for the benefit of the Government, the U.S. Marshals Service "owned" the funds at the time the interest accrued, despite the fact that the funds are now being returned to the victims.

Third, the law has given special consideration to victims' rights. Case law has treated additions to seized funds as part of the original "res." 28 U.S.C. Section 524(d)(5) provides that for tax purposes, property placed in the Assets Forfeiture Fund is treated as a gift or devise to the United

[5] There is no requirement that funds held in the Seized Assets Forfeiture Fund be invested in an interest-earning account. We have no information as to whether the seized funds were actually invested and actually earned interest. Under 28 U.S.C. Sect. 2465 (b)(1)(i) and (ii), the government is required to compute interest on seized funds for seizures occurring after August 23, 2002, regardless of whether it is actually earned. We do know that the U.S. Marshals Service submitted an interest computation sheet to the Receiver at the time the final funds were turned over to the Receiver.

States, and is therefore, not taxable. The Secretary of the Treasury has wide discretion in determining the conditions under which property will be returned to victims.

Fourth, the forfeiture laws are based on public policy, and public policy clearly supports the victims. None of the victims will recover their full investment. Assertion of a tax liability against some indeterminable amount of their recovery is repugnant to the spirit of tax law and forfeiture law. This is a factually complex situation which has not occurred in the past and which will probably never occur in the future. Clearly, the equities run in favor of the victims who have been forced to sue the government, at their own expense, in an effort to regain possession of a portion of their investments.

A. "Income" Within the Meaning of the Internal Revenue Code

It is our position that any interest earned on the seized funds during the time the funds were in the possession of the U.S. Marshals Service does not constitute income to the Receivership Estate or the Claimants within the meaning of 26 U.S.C. Section 61(a).

Income for purposes of the Code is a term of art. The Courts have struggled with its meaning and ultimately interpreted it in a practical sense. Congress' power to lay and collect taxes derives from Article 1, Sections 2, 8 and 9 and the Sixteenth Amendment to the United States Constitution which became effective on February 25, 1913, giving Congress the "power to lay and collect taxes on income, from whatever source derived ..." 26 U.S.C. Section 61(a) defines "gross income" as "all income from whatever source derived." Section 61 contains items which are included in income and items which are excluded from income. Interest income is included in income under Section 61(a)(4).

In the 1920's, income was defined as "gain derived from capital, from labor, or from both combined." Income also included profit gained through a sale or conversion of capital assets. In comparing capital to income, economists often likened capital to the tree and income to the fruit.

The Supreme Court attempted its first definition of income in *Eisner v. Macomber* as something received or drawn by the recipient for his separate use, benefit, or disposal and stood for the proposition that a stock dividend was not income to the recipient. *Eisner v. Macomber*, 252 U.S. 189 (1920).

However, in *Commissioner v. Glenshaw Glass Co., Inc.*, 348 U.S. 426, 431 (1955) the Supreme Court stated that the *Eisner v. Macomber* definition of income was not meant to provide a touchstone for all future gross income cases, but was meant to distinguish gain from capital. The Court went on to hold that punitive damages were taxable due to their nature as "undeniable accessions to wealth, clearly realized, and over which the taxpayers have complete dominion and control." This became the new definition of income.

The Courts have wrestled with the definition of income since *Eisner v. Macomber*. However, all of the Courts have consistently considered one common element in their definition of income--the reality of each situation in terms of "dollars and cents" and whether the taxpayer received something that could be referred to as income in the common sense usage of the word. The Courts in the cases discussed below considered the following factors:

1. Did the taxpayer get something he could use to "pay his debts,"
2. Did the transaction result in income in a nontechnical sense, as men commonly use the word,
3. Did the result reach a practical solution and reflect what actually happened,
4. Did the result reflect the equities of the situation, and
5. Did the result reflect administrative goals.

In *Transylvania R. Co. v. C.I.R.*, 99 F.2d 69, 71 (4th Cir. 1938), the Court refused to uphold a finding that the difference between the par value and the purchase price of railroad bonds (repurchased by the railroad) was income. The Court reasoned that the assets of the railroad were

not sufficient to support the par value; therefore, strict adherence to the treasury regulation which governed the repurchase and retirement of a corporation's own bonds (deemed a technical argument) was given no weight against the equities of the situation. See also *United States v. Kirby Lumber Co.* 284 U.S. 1 (1931).

Similarly, Justice Cardozo in *United States v. Safety Car Heating & Lighting Co.* 297 U.S. 88, 99 (1936) said:

> Income within the meaning of the Sixteenth Amendment is the fruit that is born of capital, not the potency of fruition; with few exceptions, if any, it is income as the word is known in the common speech of men."

The Ninth Circuit in *United States v. James*, 333 F.2d 748 (9th Cir. 1964), *cert. denied*, 379 U.S. 933 (1964) reflected that the Courts have repeatedly searched for a definition of income, abandoned the search, and resumed the search. The Court stated:

> "Essentially the concept of income is a flexible one, with the result in a particular case being determined by the interplay of common usage, accounting concepts, administrative goals, and finally judicial reaction to these forces." *Id.* at 753.

The Seventh Circuit Court of Appeals in *United States v. Wyss*, 239 F.2d 658 (7th Cir. 1957) referred to the "elusive and restless concept of income which has plagued the courts since *Eisner v. Macomber.*" However, the Courts have attempted to define and restrict the meaning of the word "income" to its common everyday meaning – not its meaning in the language of accountancy and economics. *Brown Shoe Co. v. Commissioner*, 133 F.2d 582 (8th Cir. 1943). In fact, the Eighth Circuit has said that "tax laws deal with actualities, and are intended to produce practical results when applied by nontechnical men." *Jacobs v. Commissioner*, 34 F.2d 233 (8th Cir. 1929).

The victims in this case will certainly not receive income as the word has been interpreted by the Courts. The legal interpretation of income calls for a "Dollars and Cents" approach. The equities of this case call for a "Dollars and Sense"approach.

B. The Practical Considerations: Statutorily Established Taxable Periods

The logical place to begin our analysis is the premise that our entire system of taxation is based on the government receiving money at fixed intervals for a statutorily established taxable period which is usually one year. It is the regularity of the system that keeps our government running at a steady pace.

The U.S. Marshals Service had dominion and control of the funds when the interest accrued. The U.S. Marshals Service kept the funds for three to four years and then turned them over to the Receivership Estate in 2001 and 2002 after the interest had already been earned. Assertion of a tax liability against either the Receiver or the claimants is tantamount to transactional taxation. This theory holds that taxation should occur, not at fixed intervals, but at the conclusion of a business deal or other transaction so that the parties know whether the transaction resulted in a net gain or a net loss. The Courts have consistently rejected "transactional taxation." The Supreme Court found that we have historically assessed and collected tax at regular intervals, stating:

> Producing revenue that is ascertainable and payable at regular intervals produces a regular flow of income which can be accounted for, assessed, and collected through a practical system of operation. There is no reason to postpone the assessment of tax until the end of a lifetime or for some other indefinite period to ascertain more precisely whether the final outcome of a particular period or transaction will be a gain or loss. *Burnet v. Sanford & Brooks Co.*, 282 U.S. 359 (1931).

Yearly accounting periods for the purpose of taxation predated codified tax law. Even before the Sixteenth Amendment, it was not uncommon to compute income annually as the net result of all transactions within the year. *Id.* at 365 (citations omitted).

Perhaps even more important in terms of practical difficulties, if the Receiver or the claimants were to be taxed on the interest earned by the U.S. Marshals Service, it would effectively destroy the accounting principle requiring that cash basis taxpayers must account for revenue in the

year it is received. The Receivership Estate would be taxed for events which occurred prior to its legal existence.

It would also result in conversion of the claimants' capital losses into ordinary income. A distribution to the claimants would result in capital losses with respect to their investment and ordinary income with respect to the portion considered to be interest income. The capital losses result in limited deductions as well as offsets against capital gains. Instead of reducing their capital losses, the alleged interest would be taxed at the highest possible rate as ordinary income.

As set out above, Section 6012(b)(3) provides that receivers and other fiduciaries who have title or possession of all or substantially all of the property of a corporation are required to file tax returns for the entity and Section 6012(b)(4) requires fiduciaries to file returns for trusts and estates. Section 6151(a) provides that the person required to make the return is required to pay the tax. In *Holywell Corp. v. Smith*, 503 U.S. 47 (1992), the Supreme Court applied these three sections of the Code to a liquidating trust in a Chapter 11 bankruptcy proceeding. The trust contained assets from both a corporate bankruptcy and a Chapter 11 filed by one of the principals of the corporation.

A trustee was appointed to administer and distribute the trust assets. The issue was which entity was required to file the returns and pay the tax. The Court found that the trustee was responsible for both filing and paying the tax on the liquidation of the assets. However, the Court clearly stated at 58:

> Here, **the United States is not seeking taxes due prior to Smith's appointment**, but is merely asserting that Smith, after his appointment, must make tax returns in the same manner as the assignee of the property of any corporation or the trustee of any trust.

The Courts have consistently held that proceeds of drug smuggling and other criminal activities are taxable to the criminals despite the fact that the proceeds were forfeited to the government and the criminals did not possess the proceeds at the end of the transaction. *Wood v.*

United States, 863 F.2d 41 (5th Cir. 1989). Likewise, embezzlers are required to include embezzled funds in income, despite restitution, on the theory that the taxpayer had dominion and control of the funds in the designated tax year. *James v. United States*, 366 U.S. 213 (1960); *McKinney v. United States*, 574 F2d1240 (5th Cir. 1978).

These cases reinforce the fact that the U.S. Marshals Service is considered, as a matter of law, to have had dominion and control of these funds during the taxable periods when the interest was earned. This is another example of legal theory created for the benefit of the government. The government is bound by this body of law, even when it operates against the interests of the government. The victims in this case are certainly as sympathetic and deserving as the government. The purpose of the forfeiture laws would be best served in this case by attempting to decrease, not increase, the victims' losses. Statutorily established taxable periods are necessary to establish some semblance of order among the several hundred million taxpayers in our system of taxation. If the interest is taxable to the Receiver, he will be faced with the dilemma of preparing and signing returns for taxable periods prior to the Court Order establishing the Receivership. Obviously, the IRS will assess interest and penalties for these periods. The facts of this case are an excellent example of the reasoning which underlies adherence to taxable period reporting.

C. Ownership of the Funds

Under our system, the taxpayer who actually receives the income is responsible for the tax. Therefore, if a taxpayer receives earnings under a claim of right without restriction as to its disposition, he has received income. This is the law, even though it may still be claimed that he is not entitled to retain the money, and even though he may still be adjudged liable to restore its equivalent. The taxability of the transaction is determined as of the end of the tax period. *North American Oil Consol. v. Burnet*, 286 U.S. 417 (1932); *Brown v. Helvering*, 291 U.S. 193 (1934). See also *Griffin v. Smith*, 101 F.2d 348 (7th Cir. 1939); *Brown v. Commissioner*, 63 F.2d 66, 68 (9th

Cir. 1933); *Board v. Commissioner*, 51 F.2d 73 (6th Cir. 1931), *cert. denied*, 284 U.S. 658. (1931). When one taxpayer has the freedom to dispose of cash at will even though the taxpayer's freedom to use the cash may be assailable by another party, it is income to the party in possession of the cash. *Rutkin v. United States*, 343 U.S. 130 (1952). Gains are taxable in the yearly period during which they are realized. The Treasury cannot be compelled to decide when a possessor's claims are without legal warrant. *National City Bank v. Helvering*, 98 F.2d 93 (2nd Cir. 1938).

The Eighth Circuit summarized this theory, when it said:

> The government will not resort to sharp practice, nor invoke technical construction fiction, which will manifestly thwart the good-faith intentions of its taxpayers, for the purpose of visiting a tax burden upon one who in fact, did not, except by construction, derive any beneficial income from the transaction. The income which petitioner received from these securities was not the income with which one pays debts. *Bettendorf v. Commissioner of Internal Revenue*, 49 F.2d 173, 175 (8th Cir. 1931). (emphasis added).

Income tax was meant to be levied on "nothing else except gains, profits, and income, and upon them only when actually realized in money or money's worth." *Safe Deposit & Trust Co. v. Miles*, 273 F. 822, 824 (D.C. Md., 1921) *aff'd* 259 U.S. 247 (1922).

In this case, the victims will never be made whole, much less receive a return on their investments. The Receiver had not been appointed when the interest was earned. Neither the Receiver nor the claimants had any adjudicated property interest in the funds when the interest was earned. It is almost certain that we will never know the identity of all the actual investors. The law would have to be tortured in order to create a "taxable event" out of the turnover of the funds to the Receiver, or the partial restitution of the victim's funds after more than four years.

Several legal theories, developed for the benefit of the government, support our contention that partial restitution of a victim's funds by the government is not a taxable event. The first legal theory involves the ownership of the funds at the time the interest was earned. Under the "Relation

Back Doctrine," properties forfeited to the United States are statutorily transferred, pursuant to 18 U.S.C. Section 981(f) to the government as of the date of the offense which renders the property subject to forfeiture.

18 U.S.C. Sec. 981(f) provides:

> All right, title, and interest in property described in subsection (a) of this section shall vest in the United States upon commission of the act giving rise to forfeiture under this section.

The courts employ the legal fiction that the property itself has committed the wrong. *Florida Dealers and Growers Bank v. United States*, 279 F.2d 673, 677 (5th Cir. 1960).

One of the selling points of the proposed Civil Asset Forfeiture Act was the enhanced consideration given to restitution to the victims. When the integrity of the system came under attack, the Director of the Treasury Department's Executive Office for Asset Forfeiture testified before the House Judiciary Committee that federal forfeiture has "benefitted the **too often forgotten victims** of criminal activity," returning $50 million to the victims of financial fraud in 1996.[6]

Legally, the funds were owned by the United States from the day the investment scam was first used to bilk innocent victims out of their life savings under the "Relation Back Doctrine." No subsequent event can divest the government of the ownership interest obtained through the Relation-Back Doctrine.

In *United States v. A Group of Islands Known as "Cayos De Barca" Together With Appurtenances, Attachments and Improvements Thereon, Located Offshore Salinas, Puerto Rico*, 185 F. Supp. 2d 117 (D.C. P.R. 2001) the District Court entered an Order "canceling" state and local property tax on real property which was the subject of a forfeiture. The Court relied on *United States v. Stowell*, 133 U.S. 1, 16-17 (1890) and the civil forfeiture statute, 18 U.S.C. Section 981 in

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[6] See Civil Asset Forfeiture: June 11, 1997, Congressional Testimony Before the House Committee on the Judiciary. 1997 WL 11233682

determining that all right, title and interest in the forfeited property vested in the United States upon commission of the act giving rise to the forfeiture.

The Puerto Rico District Court reasoned that the Order of Forfeiture entered in 1993 transferred title to the islands to the United States retroactively, notwithstanding a later stipulation entered by the Court in 1996 vesting ownership in a claimant. The Court found that the government's interest in the property was so strong that subsequent events, even the return of the property to a claimant, did not alter the government's ownership during the intervening period between the seizure and the return of the property to the claimant. Under this doctrine, the funds in this case were owned by the government from the date the first offense was committed.

Clearly, the funds that generated the interest income were owned by the government when the interest was generated. The Receiver had not yet been appointed when the interest was earned and certainly did not have possession or control of the funds until well after he was appointed.

The U.S. Marshals Service did not issue a Form 1099 to the Receiver with respect to the interest in this case. There is no legal reason why the U.S. Marshals Service would issue a 1099. The U.S. Marshals Service did not **pay** interest to anyone. The U.S. Marshals Service simply passed along the interest earned on the funds while in their possession. The voucher sheet issued by the U.S. Marshals Service simply accounts for the difference in the amount of funds seized and the amount of funds turned over to the Receiver.

If the Receiver or the claimants were taxed on the interest earned by the U.S. Marshals Service, it would destroy the principle of "dominion and control." Neither the Receiver nor the claimants had any knowledge of the account maintained by the U.S. Marshals Service during the years the interest was earned. They certainly did not have access to it or the ability to control the account.

Mr. Quilling is the Receiver for the "Funds" turned over to him, which included the previously earned interest.[7] He was not appointed until October 29, 2001, and did not receive all of the funds until September 3, 2002. The interest earned prior to the time the Receiver took possession of the funds was part of the "res" that was turned over to the Receiver from the U.S. Marshals Service.

Any income earned was attributable to the U.S. Marshals Service. Assertion of a tax liability will result in overwhelming allocation problems. Although the claimants assert an interest in the funds, and the Assistant U.S. Attorney has traced some of the funds back to one of the claimants, it is impossible to match claimants with correlating amounts of money. The claimants have no judicially-determined interest in the funds and will not have an interest until there is a final order declaring the rights of the individual claimants.

Even working in conjunction with the U.S. Attorneys' Office, the FBI and other federal agencies, it may not be possible to identify all of the owners of the funds seized, at least not to an absolute certainty. Numerous unidentified investors deposited funds into offshore banks. The funds were later transferred to other banks. Attached as Exhibit "8" is a copy of the Receiver's Unopposed Motion to Establish Distribution Procedures and Request for Evidentiary Hearing. Exhibit One to the Receiver's Motion demonstrates how four separate bank accounts, held in three different banks located in three different countries, opened in three different corporate names, were used to fund the scheme. Exhibit Two to the Receiver's Motion shows conclusively that the claimants will recover less than their initial investments through the Receivership estate. The Motion also states that total claims, computed on the basis of partial bank records, could exceed $29,414,500. This is $10,000,000 more than the funds turned over to the Receiver.

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[7]Although limited funds were turned over to the Receiver in 2001, there was no indication that these funds included interest. It was not until the balance of the funds were turned over on September 3, 2002, that the U.S. Marshals Service issued a voucher designating $2,416,732.19 as interest.

The simple math establishes that the claimants are not going to receive interest income. There are more claims than money. The concept of the Receiver or the claimants being taxed on phantom interest income when the initial investment has not been recovered is ludicrous and will not survive the first Motion for Judgment as a Matter of Law in the first jury trial for refund.

It is not humanly possible to calculate and verify the amount of each investment in order to allocate interest income to claimants in any intelligent manner. The practicalities and the equities of the situation override the need for adherence to technical procedures in allocating and assessing income. It simply cannot be done, and the government should not require an artificial allocation of interest to the victims when it is clear that the United States owned the funds at the time the interest was earned under both the "dominion and control" theory and the Relation-Back Doctrine.

D. The Interest Becomes Part of the Res

The Courts have exercised their equitable powers in forfeiture cases to maximize the victims' return. The Courts have used the legal fiction that interest payments become part of the "res." As a general proposition, prior to CAFRA sovereign immunity banned litigants from recovering awards of interest from the United States. *Library of Congress v. Shaw*, 478 U.S. 310 (1986). Several Circuits have held that sovereign immunity bars recovery of interest from the government on forfeited assets which were ultimately returned to claimants. *Larson v. United States*, 274 F.3d 643 (1st Cir. 2001); *United States v. $30,006.25 in U.S. Currency*, 236 F.3d 610 (10th Cir. 2000).

In *United States v. $133,735.30 seized from US Bancorp Brokerage Account No. 32130630*, 139 F.3d 729, 732 (9th Cir. 1998), the Court held interest "actually earned" by the government includes the benefit the government receives from having the funds in its accounts; i.e., avoiding the necessity of borrowing funds and the expenses incident to such borrowing.

In cases where the seized funds were not placed in an interest bearing account, the Courts have held that the government is considered to be constructively earning interest at the "government's

alternative borrowing rate." This was a judicial effort to convert the tangible financial benefits received by the government into the "res" of the fund. *Id.* at 732.

The Ninth Circuit has consistently held that despite sovereign immunity, it is inequitable for the government to profit from the use of claimant's funds by actually or constructively earning interest. *United States v. $277,000 U.S. Currency*, 69 F.3d 1491 (9th Cir. 1995). The interest actually or constructively earned becomes part of the "res" itself. The Sixth Circuit takes a slightly more liberal position. In *United States v. $515,060.42 in United States Currency*, 152 F.3d 491 (6th Cir. 1998), the Court expanded on the theory stating that the government isn't actually paying "interest" to the claimants, it is simply turning over a part of the res to which it wasn't entitled, citing *United States v. 1980 Lear Jet, Model 35A, Serial Number 27*, 38 F.3d 398 (9th Cir. 1994). Thus, an argument can be made that the funds turned over to the Receiver were all part of this judicially created "res," not segregated as to "seized funds," and "interest on seized funds." Because the claimants will not recover their entire investment, they cannot be considered to have earned interest.

The idea that the interest becomes part of the res is bolstered by the fact that the seized funds are not income to the government when received. 28 U.S.C. Section 524(d)(5), which established the Assets Forfeiture Fund provides as follows:

> (5) For purposes of federal income, estate, and gift taxes, property accepted hereunder shall be considered a gift, devise, or bequest to, or for the use of, the United States.

Gifts, devises, and bequests are not income to the recipient under Section 102 of the Internal Revenue Code. Section 102 of the Internal Revenue Code provides:

> **(a) General rule.** - Gross income does not include the value of property acquired by gift, bequest, devise, or inheritance.

This statutory scheme clearly shows Congressional intent to streamline the forfeiture procedure and forego any tax benefits to the government. The legal conclusion is that the interest

was not taxable to the government when received, and the practical considerations of taxable periods and ownership of the funds prevent the assertion of tax against the Receiver or the claimants.

2. Any Proposed Assessment Would Countermand Public Policy and the Purpose of the Forfeiture Laws

A. Forfeiture Laws are Based on Public Policy Considerations

Civil forfeiture seeks to punish the property used to facilitate a crime or acquired as proceeds of a crime. Criminal forfeiture seeks to punish the individual who committed the crime by depriving him of any proceeds obtained as a result of the crime. *United States v. Kingsley*, 851 F.2d 16 (1st Cir. 1988). In this case, the government is merely trying to make the victims whole. The clear intent of the government, as contained in the U.S. Attorney's Motion to Appoint Interim Receiver was to exercise its forfeiture rights temporarily for the purpose of securing the seized funds for restitution to the victims. Restitution still has not been made – five years after the seizure.

The purpose of forfeiture laws is to remove instrumentalities of crime from circulation, to take the profit out of crime, to return property to the victims more effectively than the restitution statutes, and to punish and deter criminals who fear the loss of their vacation homes and bank accounts more than they fear a prison sentence. H.R. Rep. 106-192, P. 5, 106th Cong., 1st Sess. 1999. 1999 WL 406892. CAFRA has substantially enhanced the rights and remedies of victims. It would be senseless to enact and revise forfeiture laws to assist victims, only to tax the victims on interest earned by the government while it wrongfully held the victims' funds. This is particularly true when none of the victims will recover their initial investment.

B. Distribution Priorities

The statutory distribution priority raises additional questions of allocation of income.

28 C.F.R. § 9.2(v) defines a victim as follows:

> "The term victim means a person who has incurred a pecuniary loss as a direct result of the commission of the offense underlying the forfeiture.....

28 C.F.R. § 9.9(a) sets forth the priority of payments as remission or mitigation:

> All costs and expense of the Marshals Service incident to the seizure and forfeiture are to be deducted from the amount available for remission or mitigation. These costs include expenses of trustees or other assistants. Trustees or other assistants can be used to notify potential claimants, process claims, and make recommendations on distribution pursuant to 28 C.F.R. § 9.9(c).

After payment of the administrative expenses, the priorities are as follows: owners, lienholders, Federal financial institution regulatory agencies, victims...28 C.F.R. § 9.9(a). In this case, there are substantial fees associated with the administration of the Receivership, and these fees will have priority over the claims of owners, lienholders, federal financial institution regulatory agencies and victims - in that order. These priorities present another practical problem; i.e., determining which entity will receive the funds that represent interest, as opposed to principal. It is not possible to definitively determine the exact amount of each investment or the timing of the investments.

Clearly, Congress did not intend such an inaccurate, unmanageable result. This is particularly true in this case where the Receiver was appointed specifically because neither the U.S. Attorney's Office nor the Court has the expertise and resources to administer this Estate.

C. <u>Public Policy has Resulted in Tax Immunity in Certain Circumstances</u>

There are many instances where governments yield to public policy and do not levy taxes on other governmental agencies. Section 103 of the Code prohibits federal taxation of state and municipal bonds. The purpose of excluding interest on state and municipal bonds from federal income taxation is to allow the states to borrow money at the lowest rates possible by enhancing the benefits of investing in such bonds. Section 115 of the Code prohibits federal taxation on income

of state and municipal governments. This intergovernmental immunity is said to have its basis in the Constitution.

Conversely, the states do not have the ability to tax federal agencies and instrumentalities. In *McCulloch v. Maryland*, 17 U.S. 316 (1819), the Supreme Court concluded that to allow the states to tax federal instrumentalities such as banks, mints or the mail was repugnant to the Constitution.

Clearly, the reason why seized assets are considered gifts, devises, or bequests to or for the use of the United States under 28 U.S.C. Section 524(d)(5) is to make the acquisition and disposition of these assets tax free. The case law classifying the interest earned on forfeited funds as part of the "res" streamlines the taxability issue by making additions to the funds simply part of the fund.

D. <u>The Forfeiture Statutes Provide for Wide Discretion in Restoration of Property to Victims</u>

18 U.S.C. Section 981(e)(6) gives the government equitable powers to transfer property back to victims. It provides as follows:

> Notwithstanding any other provision of the law, *** the Attorney General, the Secretary of the Treasury, or the Postal Service, as the case may be, is authorized to retain property forfeited pursuant to this section, or to transfer such property **on such terms and conditions as he may determine** as restoration to any victim of the offense giving rise to the forfeiture, including, in the case of a money laundering offense, any offense constituting the underlying specified unlawful activity. ***

Therefore, the Attorney General or the Secretary of the Treasury has discretion to transfer forfeited property under his own terms and conditions to the victims as restoration. Implicit within the meaning of restoration is the idea of bringing something back to its former condition. Restoration certainly does not contemplate that the victims suffer further and additional hardships and setbacks, in the name of collecting the revenue. This is particularly true for the forfeiture program which has amassed billions of dollars in currency and proceeds of forfeiture property.

The codification of such equitable restitution powers reflects the public policy of assisting victims. To reduce the amount of money returned to them through direct or indirect taxation defies legislative intent as well as public policy considerations in favor of victims.

Finally, from a purely economic standpoint, the Forfeiture Fund accumulated approximately 3.5 billion dollars in the first ten years of its existence.[8] Surely, this is a sufficient windfall to the government, so that it can forego whatever tax it would assess and collect against innocent parties in this case. The Receiver is an agent of the Federal District Court, carrying out functions which would fall to the Court in his absence. The U.S. Attorney is unable to administer the claims in this case. To tax the Receivership Estate for the interest earned by the government will have a chilling effect on the willingness of competent, qualified, and tenacious individuals to serve as receivers in cases involving complex, multi-tiered financial fraud.

E. CONCLUSION

Based on the above discussion and legal authorities, the Receiver asserts that any limited recovery by the claimants does not constitute interest income within the meaning of Section 61 of the Code. The nature of the transaction precludes such a recovery from being considered as income because the limited recoveries by the claimants do not constitute gain, profit, or accessions to wealth.

This position is based on the legal principles establishing statutory taxable periods which are applicable to the individual or entity having dominion and control over funds or assets during the taxable period in which income is earned. The interest was earned while the funds were in the dominion and control of the U.S. Marshals Service in tax years preceding the appointment of the Receiver. These principles as well as the Relation-Back Doctrine establish the government as the owner of the funds at the time interest income was generated.

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[8] Blakely, Shaping Today's Forfeiture Law: A Conversation with Senator McClellan, 21 J. Legis. 175, 1995.

To hold otherwise would invoke transactional taxation in contravention of well-established accounting matching principles and would result in the conversion of long term capital losses to ordinary income to the detriment of the victims who have been deprived of their funds for five years.

One of the goals of forfeiture laws in general, and the Civil Asset Forfeiture Reform Act in particular, was to provide an efficient and effective method of returning property to the victims of financial fraud. The Courts have exercised their equitable powers to reclassify interest payments to victims as part of the "res" of forfeited property.

It would be illogical and contrary to public policy to tax either the Receiver or the claimants for alleged "interest income" in this case. As further evidence of the legislative interest to streamline recovery by victims, the forfeiture laws provide for wide discretion on the part of the Secretary of the Treasury in restoration of property to victims. CAFRA provides for recovery of interest by victims and waives sovereign immunity under the Federal Tort Claims Act for damages incurred as a result of government seizures.

This is a situation involving complex, layered transactions resulting in massive international financial fraud. The U.S. Attorney requested the appointment of a receiver to administer the assets because the government did not have the expertise or resources to do so. Any proposed taxation of the Receiver or the claimants would be contrary to common sense, tax law, the legislative intent of CAFRA, and public policy.

F. PROCEDURAL MATTERS

1. <u>Revenue Procedure 2002-1 Statements</u>

a. To the best of the knowledge of the taxpayer and the taxpayer's representative, none of the issues on which a ruling is requested is in a return of the taxpayer (or a related taxpayer) that (1) is under examination by any District Director or Appeals Office; (2) has been examined and the statute of limitations on assessment or refund has not expired or a closing agreement has not been

entered into with a district office; (3) is under consideration by any area office in connection with a return for a prior period and the statute of limitations on assessment or refund has not expired or a closing agreement has not been entered into by an Appeals Office; or (4) is pending in litigation.

b. To the best of the knowledge of the taxpayer and the taxpayer's representative, none of the issues involved in this ruling request has been the subject of a ruling or a request for ruling by the taxpayer, a related taxpayer, or a member of an affiliated group of which the taxpayer is a member.

c. To the best of the knowledge of the taxpayer and the taxpayer's representative, a request involving the same or a similar issue has not been submitted but withdrawn by the taxpayer, a related taxpayer, a predecessor, or any representatives.

d. To the best of the knowledge of the taxpayer and the taxpayer's representative, a request involving the same or a similar issue has not been submitted by the taxpayer, a related taxpayer or a predecessor.

e. To the best of the knowledge of the taxpayer and the taxpayer's representative, neither the taxpayer nor any related entity is submitting another request involving the same or a similar issue at the same time as this request.

f. Not applicable.

g. The law is uncertain as to the interest income issue in this request for ruling. This case is unique because of the precipitating forfeiture, the subsequent involvement of the U.S. Marshals Service, and the federal receivership. This case involves forfeiture law and its associated legislative intent as well as tax law. There is authority, cited in this request, supporting the Receiver's position with respect to the propriety of taxing the taxpayer with dominion and control over the funds during the taxable period in which the interest was earned. There is also authority, which has been cited, supporting the Receiver's position that the interest earned by the U.S. Marshals

Service does not constitute income to the claimants who will suffer shortfalls on their initial investments.

Prior to filing this Request for Private Letter Ruling, the Receiver contacted and had a conference with the IRS Examination Division in Greensboro, North Carolina in order to resolve this issue. The IRS indicated that the interest income is most likely not taxable to the Receiver or any of the claimants. The Receiver filed this request in order to obtain a binding resolution of the issue. To the best of the knowledge of the taxpayer and its representative, there is no pending legislation in this area.

h. To the best of the knowledge of the taxpayer and the taxpayer's representative, there is no law covering the finite question raised by this particular issue. The Receiver researched this issue extensively but did not find any authorities contrary to his position that the interest income earned by the U.S. Marshals Service is not income to either the Receiver or the claimants.

i. If there is any question regarding the issuance of a favorable letter ruling, the taxpayer requests a conference on the issues involved in this letter ruling request.

j. The taxpayer requests that a copy of any document related to the letter ruling request be transmitted to Michael J. Quilling and Mary C. Vance by facsimile at (214) 871-2111 or (214) 871-2125.

k. Not applicable.

l. Not applicable.

2. Administrative

a. The Deletions Statement and Checklist required by Rev. Proc. 2002-1 are enclosed.

b. The required user fee of $500.00 is enclosed.

c. A Power of attorney (Form 2848) is enclosed.

Very truly yours,

By: Michael J. Quilling, Receiver of the Estate of All Funds on deposit in account number 0006698729075 in the Name of MM ACMC Banque de Commerce, Inc. at Nationsbank consisting of $18,756,420.97, More or Less

____________________________ _______

Michael J. Quilling, Receiver Date

DECLARATION:

Under penalties of perjury, I declare that I have examined the request, including accompanying documents, and, to the best of my knowledge and belief, the request contains all the relevant facts relating to the request, and such facts are true, correct, and complete.

Michael J. Quilling

By: Michael J. Quilling, Receiver of the Estate of All Funds on deposit in account number 0006698729075 in the Name of MM ACMC Banque de Commerce, Inc. at Nationsbank consisting of $18,756,420.97, More or Less

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Michael J. Quilling Receiver Date