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CIVIL ACTION NO.
3:98-CV-2689-M

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TO THE HONORABLE JEFF KAPLAN, UNITED STATES MAGISTRATE JUDGE:

COMES NOW, Michael J. Quilling (“Receiver”) and files this his Motion to Determine Responsibility for Filing Tax Returns (Hammersmith Trust Receivership Estate) and in support of such would respectfully show unto the Court as follows:

Background Facts

1. On November 13, 1998, the United States Securities and Exchange Commission (“SEC”) initiated these proceedings and, in connection therewith, sought the appointment of a receiver. By Order dated November 13, 1998, the Court appointed Michael J. Quilling as Receiver and he has functioned in that capacity since that time.

2. On March 9, 2001, the Receiver filed his Unopposed Motion to Designate Receivership Estates. By Order entered March 13, 2001, the Court established four different receivership estates with respect to these proceedings. One of those established is the Hammersmith Trust Receivership Estate. It is comprised of the assets and claims with respect to Hammersmith Trust, L.L.C. (both Tennessee and Nevis, West Indies), Hammersmith Trust, Ltd., Bridgeport Alliance, L.L.C., Landfair Custodial Services, Inc., Microfund, L.L.C., American Pacific Bank & Trust, Inc., Eurofund Investments, Inc., B. David Gilliland and Melody Rose (collectively the "Receivership Subjects").

3. Pursuant to Treasury Regulation 1.6012-3(a)(1) and (b)(4) and (5)¹ it is arguable that the tax returns for one or more of the Receivership Subjects due since the entry of the Receivership Order are the responsibility of the Receiver. However, given the limited scope of the assets of the Receivership Subjects administered by the Receiver, the Receiver submits that he should not be burdened with the responsibility of preparing tax returns nor should the receivership estate be burdened with the cost of such tax returns as to the Receivership Subjects.

The Receivership Estate

4. Since his appointment the Receiver has obtained a separate tax identification number for the Hammersmith Trust Receivership Estate (47-6236368). It is the Receiver's intention to file a tax return for the Hammersmith Trust Receivership Estate and to, in connection therewith, submit appropriate tax disclosures to the Internal Revenue Service for the interest earned by the Receivership Estate which is more than offset by expenses so no tax should be due.

¹ For the Court's convenience, a copy of the regulation is attached hereto as Exhibit 1.

The Receivership Subjects

5. As to the corporate and trust Receivership Subjects, the Receiver does not believe he should have to file those returns because most of them had no assets or the assets were so *di minimis* that they hardly comprised all or substantially all of the assets which should have been possessed by the trusts and corporation but for the looting and hiding of assets by insiders. Likewise, as to the individual Receivership Subjects, the Receiver did not take possession of all of the assets of either of them. Accordingly, pursuant to § 1.6012-3(b)(5) the Receiver should not be required to make these returns. Although the Receiver has not been able to reach each of the individuals, it is believed that each of them have prepared their own returns during the five-year course of these proceedings. The Receiver requests that the Court issue an order that he has no responsibility for the tax returns of any Receivership Subject.

WHEREFORE, PREMISES CONSIDERED, Receiver prays that upon final consideration of this matter that the Court enter an Order consistent with the foregoing and for such other and further relief, general or special, at law or in equity, to which the Receiver may show himself justly entitled.

Respectfully submitted,

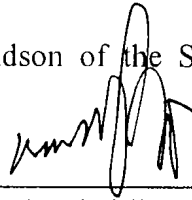
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Dallas, Texas 75201
(214) 871-2100 (Telephone)
(214) 871-2111 (Facsimile)

BY: 

Michael J. Quilling
State Bar No. 16432300
ATTORNEYS FOR RECEIVER

CERTIFICATE OF CONFERENCE

The Receiver has conferred with Kevin Edmondson of the Securities and Exchange Commission and it does not oppose the Motion.



Michael J. Quilling

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of March, 2004, a true and correct copy of the foregoing document was served via first class mail, postage pre-paid, on the persons set forth below and upon each of the persons/entities on the service list attached hereto.

Kevin Edmondson
Securities & Exchange Commission
801 Cherry Street, 19th Floor
Fort Worth, Texas 76102

Internal Revenue Service
Special Procedures Section
1100 Commerce, 9th Floor
MC5020 DAL
Dallas, Texas 75242



Michael J. Quilling

§ 1.6012-3 Returns By Fiduciaries.



(a) For Estates And Trusts

(1) In General.

Every fiduciary, or at least one of joint fiduciaries, must make a return of income on form 1041 (or by use of a composite return pursuant to Section 1.6012-5) and attach the required form if the estate or trust has items of tax preference (as defined in section 57 and the regulations thereunder) in any amount:

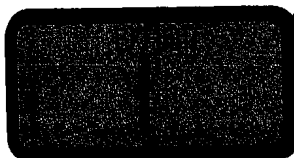
- (i) For each estate for which he acts if the gross income of such estate for the taxable year is \$600 or more;
- (ii) For each trust for which he acts, except a trust exempt under section 501(a), if such trust has for the taxable year any taxable income, or has for the taxable year gross income of \$600 or more regardless of the amount of taxable income; and
- (iii) For each estate and each trust for which he acts, except a trust exempt under section 501(a), regardless of the amount of income for the taxable year, if any beneficiary of such estate or trust is a nonresident alien.

(2) Wills And Trust Instruments.

At the request of the Internal Revenue Service, a copy of the will or trust instrument (including any amendments), accompanied by a written declaration of the fiduciary under the penalties of perjury that it is a true and complete copy, shall be filed together with a statement by the fiduciary indicating the provisions of the will or trust instrument (including any amendments) which, in the fiduciary's opinion, determine the extent to which the income of the estate or trust is taxable to the estate or trust, the beneficiaries, or the grantor, respectively.

(3) Domiciliary And Ancillary Representatives.

In the case of an estate required to file a return under subparagraph (1) of this paragraph, having both domiciliary and ancillary representatives, the domiciliary and ancillary representatives must each file a return on Form 1041. The domiciliary representative is required to include in the return rendered by him as such domiciliary representative the entire income of the estate. The return of the ancillary representative shall be filed with the district director for his internal revenue district and shall show the name and address of the domiciliary representative, the amount of gross income received by the ancillary



representative, and the deductions to be claimed against such income, including any amount of income properly paid or credited by the ancillary representative to any legatee, heir, or other beneficiary. If the ancillary representative for the estate of a nonresident alien is a citizen or resident of the United States, and the domiciliary representative is a nonresident alien, such ancillary representative is required to render the return otherwise required of the domiciliary representative.

(4) Two Or More Trusts.

A trustee of two or more trusts must make a separate return for each trust, even though such trusts were created by the same grantor for the same beneficiary or beneficiaries.

 **(5) Trusts With Unrelated Business Income.**

Every fiduciary for a trust described in section 511(b)(2) which is subject to the tax imposed on its unrelated business taxable income by section 511(b)(1) shall make a return on Form 990-T for each taxable year if the trust has gross income, included in computing unrelated business taxable income for such taxable year, of \$1,000 or more. The filing of a return of unrelated business income does not relieve the fiduciary of such trust from the duty of filing other required returns.

(6) Charitable Remainder Trusts.

Every fiduciary for a charitable remainder annuity trust (as defined in Section 1.664-2) or a charitable remainder unitrust (as defined in Section 1.664-3) shall make a return on Form 1041-B for each taxable year of the trust even though it is nonexempt because it has unrelated business taxable income. The return on Form 1041-B shall be made in accordance with the instructions for the form and shall be filed with the designated Internal Revenue office on or before the 15th day of the fourth month following the close of the taxable year of the trust. A copy of the instrument governing the trust, accompanied by a written declaration of the fiduciary under the penalties of perjury that it is a true and complete copy, shall be attached to the return for the first taxable year of the trust.

(7) Certain Trusts Described In Section 4947(a)(1).

For taxable years beginning after December 31, 1980, in the case of a trust described in section 4947(a)(1) which has no taxable income for a taxable year, the filing requirements of section 6012 and this section shall be satisfied by the filing, pursuant to Section 53.6011-1 of this chapter (Foundation Excise Tax Regulations) and Section 1.6033-2(a), by the fiduciary of such trust of--

- (i) Form 990-PF if such trust is treated as a private foundation, or
- (ii) Form 990 if such trust is not treated as a private foundation.

When the provisions of this paragraph (a)(7) are met, the fiduciary shall not be required to file Form 1041.

(8) Estate And Trusts Liable For Qualified Tax.

In the case of an estate or trust which is liable for one or more qualified State individual income taxes, as defined in section 6362, for a taxable year, see paragraph (b) of Section 301.6361-1 of this chapter (Regulations on Procedure and Administration) for rules relating to returns required to be made.

(9) A Trust Any Portion Of Which Is Treated As Owned By The Grantor Or Another Person Pursuant To Sections 671 Through 678.

In the case of a trust any portion of which is treated as owned by the grantor or another person under the provisions of subpart E (section 671 and following) part I, subchapter J, chapter 1 of the Internal Revenue Code see Section 1.671-4.

(b) For Other Persons

 **(1) Decedents.**

The executor or administrator of the estate of a decedent, or other person charged with the property of a decedent, shall make the return of income required in respect of such decedent. For the decedent's taxable year which ends with the date of his death, the return shall cover the period during which he was alive. For the filing of returns of income for citizens and alien residents of the United States, and alien residents of Puerto Rico, see paragraph (a) of Section 1.6012-1. For the filing of a joint return after death of spouse, see paragraph (d) of Section 1.6013-1.

(2) Nonresident Alien Individuals

(i) In General.

A resident or domestic fiduciary or other person charged with the care of the person or property of a nonresident alien individual shall make a return for that individual and pay the tax unless:

- (a) The nonresident alien individual makes a return of, and pays the tax on, his income for the taxable year,
- (b) A responsible representative or agent in the United States of the nonresident alien individual makes a return of, and pays the tax on, the income of such alien individual for the taxable year, or
- (c) The nonresident alien individual has appointed a person in the United States to act as his agent for the purpose of making a return of income and, if such fiduciary is required to file a Form 1041 for an estate or trust of which such alien individual is a beneficiary, such fiduciary attaches a copy of the agency appointment to his return on Form 1041.

(ii) Income To Be Returned.

A return of income shall be required under this subparagraph only if the nonresident alien individual is otherwise required to make a return in accordance with paragraph (b)

of Section 1.6012-1. The provisions of that paragraph shall apply in determining the form of return to be used and the income to be returned.

(iii) Disallowance Of Deductions And Credits.

For provisions disallowing deductions and credits when a return of income has not been filed by or on behalf of a nonresident alien individual, see section 874 and the regulations thereunder.

(iv) Alien Resident Of Puerto Rico.

This subparagraph shall not apply to the return of a nonresident alien individual who is a bona fide resident of Puerto Rico during the entire taxable year. See Section 1.876-1.

(v) Cross Reference.

For requirements of withholding tax at source on nonresident alien individuals and of returns with respect to such withheld taxes, see Sections 1.1441-1 to 1.1465-1, inclusive.

(3) Persons Under A Disability.

A fiduciary acting as the guardian of a minor, or as the guardian or committee of an insane person, must make the return of income required in respect of such person unless, in the case of a minor, the minor himself makes the return or causes it to be made.

(4) Corporations.

A receiver, trustee in dissolution, trustee in bankruptcy, or assignee, who, 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 the property or business of a corporation, shall make the return of income for such corporation in the same manner and form as corporations are required to make such returns. Such return shall be filed whether or not the receiver, trustee, or assignee is operating the property or business of the corporation. A receiver in charge of only a small part of the property of a corporation, such as a receiver in mortgage foreclosure proceedings involving merely a small portion of its property, need not make the return of income. See also Section 1.6041-1, relating to returns regarding information at source; Sections 1.6042-1 to 1.6042-3, inclusive, relating to returns regarding payments of dividends; Sections 1.6044-1 to 1.6044-4, inclusive, relating to returns regarding payments of patronage dividends; and Sections 1.6049-1 and 1.6049-2, relating to returns regarding certain payments of interest.

(5) Individuals In Receivership.

A receiver who stands in the place of an individual must make the return of income required in respect of such individual. A receiver of only part of the property of an individual need not file a return, and the individual must make his own return.

(c) Joint Fiduciaries.

In the case of joint fiduciaries, a return is required to be made by only one of such fiduciaries. A return made by one of joint fiduciaries shall contain a statement that the fiduciary has sufficient knowledge of the affairs of the person for whom the return is made to enable him to make the return, and that the return is, to the best of his knowledge and belief, true and correct.

(d) Other Provisions.

For the definition of the term "fiduciary", see section 7701(a)(6) and the regulations thereunder. For information returns required to be made by fiduciaries under section 6041, see Section 1.6041-1. As to further duties and liabilities of fiduciaries, see section 6903 and Section 301.6903-1 of this chapter (Regulations on Procedure and Administration).

Editorial Note: For Federal Register citations affecting Section 1.6012-3, see the List of CFR Sections Affecting in the Finding Aids section of this volume.

[T.D. 6500, 25 FR 12108, Nov. 26, 1960; as amended by T.D. 8633, 60 FR 66085-66091, Dec. 21, 1995]