

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

CASE NO. 6:07-cv-1920-Orl-22-DAB

Plaintiff,

vs.

ROBERT E. LANE, WEALTH POOLS
INTERNATIONAL, INC., and
RECRUIT FOR WEALTH, INC.,

Defendants,

T-N-T EDUCATION COMPANY, INC.,
RICHARD LANE, MUNDO TRADE, INC.,
RENEE BECKER, JULIA LANE, and
FIRST FIDUCIARY BUSINESS TRUST,

Relief Defendants.

RECEIVER'S MOTION (A) TO DIRECT INTERNAL REVENUE SERVICE
FOR PROMPT DETERMINATION OF TAX LIABILITY
(B) TO PROVIDE THE RECEIVER WITH NOTICE; AND (C) DELIVERY
OF TAX REFUND TO THE RECEIVER'S ESCROW ACCOUNT
AND INCORPORATED MEMORANDUM OF LAW

Michael I. Goldberg, as Receiver ("Receiver") for Wealth Pools International, Inc. and Recruit for Wealth, Inc., (jointly, "Wealth Pools"), moves this Court for the entry of an Order directing the Internal Revenue Service ("IRS") (a) to make a prompt determine of tax liability for Relief Defendants Richard Lane and T-N-T Education Co., Inc.; (b) to provide the Receiver with notice; and (c) and for delivery of the tax refund to the Receiver's escrow account. In support, the Receiver states as follows:

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A. Facts

1. Pursuant to the Order Substituting Receiver, Michael I. Goldberg is the Receiver over Wealth Pools. [DE 185]. The Receiver has the same duties and responsibilities as enumerated in the initial order appointing receiver (the "Receivership Order"). [DE 12].

2. In the Complaint for Injunctive and Other Relief, the Securities and Exchange Commission alleged that between April 2006 and August 2007, defendant Robert Lane transferred investors' proceeds to his brother, Richard Lane ("Lane") and to T-N-T Education Company, Inc. ("TNT," and jointly with Lane, the "Relief Defendants"). [DE 1]. Lane was the President and Director of TNT. [DE 1].

3. Without admitting any wrongdoing, the Relief Defendants consented to the entry of judgments against them. *See* DE 186 and DE 187. The judgments included provisions for the transfer of real property to the Receiver and the disgorgement of certain funds, including any tax refund¹ relating to their federal and/or state taxes for the years 2007, 2008 and 2009 (collectively, the "Tax Returns").

4. Accountants for the Relief Defendants have recently prepared the Tax Returns and presented the Tax Returns to the SEC and Receiver for review. The Receiver and the SEC approved the Tax Returns and on or about January 31, 2011, the Relief Defendants mailed the Tax Returns to the appropriate taxing authorities. Based on the Tax Returns, the Receiver estimates that receivership estate will receive refunds in approximate sum of \$1.2 million (the "Refund").

5. The Court has instructed the Receiver to complete the liquidation of the receivership assets, make a distribution to creditors and formally dissolve the receivership case.

¹ Upon separate motion, the Receiver will seek the Court's approval of a settlement with Lane, whereby Lane is entitled to keep a portion of the anticipated tax return (in the approximate sum of \$33,00).

On February 2, 2011, the Court entered an Order closing this case, but reserving jurisdiction to award fees, supervise the distribution to investors and wind up the receivership. [D.E. 215]. However, before he can make a distribution to the creditors and formally terminate the receivership, the Receiver must first liquidate the Refund which is the only remaining asset in the estate.

6. Due to the size of the Refund, there is a possibility that the Internal Revenue Service ("IRS") will select the Tax Returns for audit. In typical cases, the IRS has up to three years to conduct an audit. *See* 11 U.S.C. § 6501(a). The Receiver can not distribute the proceeds of the Refund if the possibility exists that the Refund is subject to further review in the form of an IRS audit. As a result, in the abundance of caution, the Receiver would not be able to make a final distribution for upwards to three years.

7. Based on the foregoing, the Receiver seeks the entry of an Order (a) directing the IRS to make a prompt assessment of the Tax Returns for potential tax liability; (b) to provide the Receiver with all correspondence and other notices regarding the Tax Returns; and (c) and for delivery of the Refund directly to the Receiver's escrow account. A proposed Order is attached hereto as Exhibit 1.

B. Notice

8. Since this motion directs the IRS to modify its internal policies, the Receiver has employed Rule 4(i) of the Federal Rules of Civil Procedure, as a guideline for service of the motion on the IRS. Accordingly, a copy of this motion will be sent by certified mail to (a) the U.S. Attorney for the Middle District of Florida; (b) the Attorney General of the United States; (c) the IRS main office in Washington, D.C.; and (d) the Jacksonville, Florida district office of the IRS. The mailing addresses are included in the service list attached to this motion.

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Memorandum of Law

Section 6501(a) of the Internal Revenue Code ("IRC") provided the IRS with three years to conduct an audit of tax returns. Under certain circumstances, the deadline for the IRS to assess a return is shortened. In the case of a decedent or a corporation in the process of dissolution, upon formal request of the taxpayer, the IRS shall assess the tax within 18 months after the date of the request. *See* 26 U.S.C. § 6501(d). Since filing the amended tax return was TNT's final undertaking prior to dissolution, section 6501(d) is applicable for TNT. Section 6501(d) does not apply to Lane in his individual capacity, so there is no statutory mechanism in the IRC to shorten the three year period for assessment for Lane. Even if the Receiver and the Relief Defendants submit Form 4810, Request for Prompt Assessment Under IRC Section 6501 for TNT, the Receiver would be unable to make a distribution to creditors until the passage of the 18 months to three years from the date the Relief Defendants filed the Tax Returns.

Title 11 of the U.S. Code (the "Bankruptcy Code") also provides a mechanism for a trustee in a bankruptcy case to promptly resolve potential tax liability. Pursuant to 11 U.S.C. § 505(b), upon submitting the tax return and payment, a trustee may request a determination of any unpaid liability of the bankruptcy estate for any tax incurred during the administration of the case. Unless the return is fraudulent or contains a material misrepresentation, the trustee and the debtor are discharged from any liability for the tax if the governmental unit does not notify the trustee that the return has been selected for examination within 60 days after the request. *Id.* The reduced timeframe allows the bankruptcy trustee to pay claims and close the case without additional delay.

Courts have allowed Receivers to adopt bankruptcy laws and procedures in the administration of receivership cases. In *SEC v. First Securities Company of Chicago*, 507 F.2d

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417, 420 (7th Cir. 1974), the Seventh Circuit upheld the receiver's application of Section 60(e) of the Bankruptcy Act (the predecessor to the Bankruptcy Code) applicable to a bankruptcy stockbroker, as the guideline for an equitable formula for the distribution of the receivership assets in receivership that involved a stock brokerage firm. Certain of the district courts have adopted bankruptcy rules for use in federal receivership cases. In *Commodity Futures Trading Commission v. Topworth International, Ltd.*, 205 F.3d 1107 (9th Cir. 2000), the Ninth Circuit acknowledged that the local rules of the Central District of California direct receivers, unless ordered otherwise by the court, to administer the estate as nearly as possible in accordance with the practice in the administration of estates in bankruptcy. This Court should also apply the guidelines set forth in the Bankruptcy Code which shorten the deadline for determination of tax liability.

The district court has broad powers and wide discretion to determine relief in an equity receivership. *SEC v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992). Here, the Court should adopt the provisions of Section 505(b) of the Bankruptcy Code and direct the IRS to notify the Relief Defendants and the Receiver within 60 days after the entry of this Order whether or not the Amended Returns have been selected for examination. Otherwise, unless the Amended Returns are fraudulent or contain material misrepresentations, the Relief Defendants and the Receiver are discharged from any liability for the Amended Returns.

WHEREFORE, the Receiver, Michael I. Goldberg, respectfully requests this Court (a) direct the IRS to make a prompt assessment of tax liability for the years 2007, 2008 and 2009 for Relief Defendants Richard Lane and T-N-T Education Co., Inc.; (b) to provide the Receiver with all correspondence and other notices regarding the Tax Returns; and (c) and for delivery of the

Refund directly to the Receiver's escrow account; (d) and to grant such other relief as is just and proper.

LOCAL RULE 3.01(g) CERTIFICATION

Pursuant to Local Rule 3.01(g), counsel for the Receiver has conferred with both counsel for the SEC and counsel for the Defendants and Relief Defendants in a good faith effort to resolve this matter. Counsel for the SEC, counsel for the Defendant, and counsel for the Relief Defendants have no objection to the relief requested herein.

Counsel for the Receiver has also contacted the Jacksonville regional office for the IRS Office of Chief Counsel to advise the IRS of the relief requested in the motion and begin implementation of the relief requested. However, counsel was informed that the IRS can not take any position on the motion until the Department of Justice and the U.S. Attorneys Office is made a party to this action.

Respectfully submitted,

\s\ Kathryn B. Hoeck, Esq.

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**COUNSEL FOR RECEIVER FOR
WEALTH POOLS INTERNATIONAL, INC. and
RECRUIT FOR WEALTH, INC.**

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 6, 2011, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF System, which will send a notice of electronic filing to the following:

Christopher E. Martin, Esq. (martinc@sec.gov)
Counsel for Securities & Exchange Commission

Trisha Dee Sindler, Esq. (Fuchst@sec.gov)
Counsel for Securities & Exchange Commission

Michael Howard LaFay, Esq. (lafaym@nejamelaw.com)
Counsel for Robert E. Lane

Jonathan R. Williams, Esq. (jrwilliams@gmail.com)
Counsel for Julia Lane and Renee Becker

That on April 6, 2011, I served the foregoing document by U.S. Mail to the following non-CM/ECF participants:

Arthur J. Madden, III, Esq.
465 Dauphin St.
Mobile, AL 36602
Counsel for Richard H. Lane and T-N-T Education Company, Inc.

Mundo Trade, Inc.
First Fiduciary Business Trust
c/o Robert E. Lane
12711 Broleman Road
Orlando, FL 32832

That on April 6, 2011, I served the foregoing document by certified mail to the following:

Jacksonville District
Internal Revenue Service
Attn: Insolvency Stop 5720
400 W. Bay Street
Jacksonville, FL 32202

Robert E. O'Neill
U.S. Attorney
Middle District of Florida
400 N. Tampa Street, Suite 3200
Tampa, Florida 33602

Eric Holder
U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Internal Revenue Service
1111 Constitution Ave., NW
Washington, DC 20224

/s/ Kathryn B. Hoeck, Esquire _____

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