

FILED

Clerk
District Court

MAR 09 2016

for the Northern Mariana Islands

By 
(Deputy Clerk)

UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

BETTY JOHNSON, on behalf of herself, and as
a representative of a class of similarly-situated
persons,

Plaintiffs,

v.

RALPH DELEON GUERRERO TORRES,
Governor of the Commonwealth of the Northern
Mariana Islands (“CNMI”), *et al.*,

Defendants.

CIVIL CASE NO. 09-00023

ORDER

re Joint Motion to Confirm the
NMI Settlement Fund’s Status as a
Tax Exempt Entity

On March 8, 2016, this case came before the court for a hearing on a Joint Motion to Confirm the NMI Settlement Fund's Status as a Tax Exempt Entity (the “Motion”) filed by the Settlement Fund Trustee (the “Trustee”) and the Settlement Class Counsel (“Class Counsel”). *See* ECF No. 742. Having read the relevant pleadings and heard the argument of counsel, the court issues the following order confirming the NMI Settlement Fund (the “Settlement Fund”) is a tax exempt entity.

ANALYSIS

1. Who should determine the tax status of the Settlement Fund

The court will first address the CNMI Government’s argument that this court should refrain from making a determination on the Settlement Fund’s tax exempt status in favor of allowing the Director of Revenue and Taxation to first decide the matter. *See* Response at 2-3, ECF No. 743. According to the CNMI Government, the matter raised in the Motion does not involve a dispute

1 over the court's ability to enforce the Settlement Agreement or a dispute over the meaning of a
2 particular provision of the Settlement Agreement. Instead, the question presented is relates to an
3 interpretation of the Commonwealth's tax laws, and the CNMI Government asserts this is a
4 determination best left to the purview of the Division of Revenue and Taxation and its director,
5 since said official must enforce the Commonwealth's tax laws.¹ *Id.*

6 The Trustee and Class Counsel disagree and assert that the issue before the court requires
7 an examination and interpretation of the Settlement Agreement to ascertain the legal nature and
8 character of the Settlement Fund. Accordingly, the Trustee and Class Counsel contend that this
9 court has the jurisdiction to determine whether the Settlement fund is exempt from certain local
10 taxes.

11 The court concurs with the Trustee and Class Counsel. Whether the Settlement Fund is a
12 tax exempt entity depends on the nature and characterization of the Settlement Fund as created by
13 the Settlement Agreement. Thus, with all due respect to the Director of the Department of Revenue
14 and Taxation, this court will not refrain from making a determination on the Settlement Fund's tax
15 exempt status.

16 2. Whether the Settlement Fund is a tax exempt entity

17 The Trustee and Class Counsel brought the instant motion requesting the court to clarify
18 whether the Settlement fund is a tax exempt entity. According to the Motion, the issue was raised
19 by the CNMI Government and Ernest & Young LLP in connection with the Fiscal Year 2014
20 financial audit of the Settlement Fund. *See* Mot. at 2, ECF No. 742. The CNMI Government made
21 a determination at that time that the Settlement Fund was a taxable entity. *Id.* The Settlement Fund
22 disagreed, thus prompting the filing of the instant Motion.

23 Pursuant to Section 1105 of Title 4, Commonwealth Code,
24

25 ¹ The CNMI Government cites to Section 1806 of Title 4, Commonwealth Code, which
26 states that "the Director [of Revenue and Taxation] shall have supervision and be responsible for
27 all matters concerning revenue and taxation on a day to day basis." 4 CMC §1806.

1 Except as provided in subsection (b),² the United States and Commonwealth
2 Governments, their departments, agencies and instrumentalities, but not their
3 contractors, are specifically exempt from any liability to pay any tax imposed by this
division other than such taxes required to be withheld from another person and paid
over to the Secretary.

4 4 CMC §1105(a).

5 The Trustee and Class Counsel assert that because the Settlement Fund is an extension of
6 this court, which was established by the United States government, the Section 1105 tax exemption
7 should likewise be applied to the Settlement Fund. The Trustee and Class Counsel note that the
8 Settlement Fund “serves a purely public purpose,” specifically to “preserve the Settlement class’s
9 constitutional rights to accrued retirement benefits under . . . the CNMI Constitution, and to ensure
10 that such benefits are not diminished or impaired.” Mot. at 4, ECF No. 742. Additionally, the
11 Trustee and Class Counsel contend that the Settlement Fund was created under the auspices of this
12 court and is administered by a Trustee who was appointed by the below-signed judge. Thus, they
13 maintain that the Settlement Fund is entitled to a tax exemption under Section 1105(a).

14 The CNMI Government agrees that the Settlement Fund is exempt from taxation but for a
15 different reason. According to the Government, the Settlement Fund “stands in the Retirement
16 Fund’s shoes for Commonwealth tax purposes” since it “carries out all the functions the Retirement
17 Fund previously carried out for the Class Members, and the Trustee carries out the duties that were
18 carried out by the Board of Trustees.” Response at 4, ECF No. 743. The CNMI Government
19 asserts that “[b]ecause the Retirement Fund is exempt from taxation, so too is the Settlement Fund.”
20

21 ² Subsection (b) provides in its entirety:

22 Taxes imposed by this Division shall apply to the Commonwealth Governments,
23 its departments, agencies and instrumentalities for income or revenue derived from
24 the conduct of activities or goods, merchandise or commodities brought into the
25 Commonwealth for purposes of excise tax which are not substantially related to the
26 exercise or performance of such department, agency, or instrumentality’s
27 government purpose. The Secretary shall prescribe regulations to clarify what
activities are substantially related to the exercise or performance of a department,
agency, or instrumentality’s government purpose.

28 4 CMC §1105(b).

1 *Id.* Furthermore, the Government likens the Settlement Fund to the Retirement Fund under
 2 receivership and argues that “an entity under receivership does not become federal in nature.”³ *Id.*

3 Contrary to the CNMI Government’s contentions, the Settlement Fund is not simply a
 4 restructured Retirement Fund nor does it “stand in the shoes” of the Retirement Fund. Rather, the
 5 Settlement Fund is a distinct entity, separate and apart from the Retirement Fund. The Settlement
 6 Fund was created in this class action law suit under the auspices of this court and, as noted by the
 7 Trustee and Class Counsel, is administered by a federally appointed trustee subject to this court’s
 8 supervision. The Trustee was appointed pursuant to Rule 66 of the Federal Rules of Civil
 9 Procedure and has all the powers of a federal equity receiver. *See* Settlement Agreement at § 10.0,
 10 ECF No. 468-1. Nevertheless, this does not equate the Settlement Fund to the Retirement Fund
 11 under receivership. The court concurs with the Trustee and Class Counsel; the Settlement Fund is
 12 an extension of this court, and as such, is exempt from taxation under Section 1105(a).

13 Accordingly, the court grants the Motion. The CNMI Government is ordered to recognize
 14 the Settlement Fund as a tax exempt entity under Section 1105(a).

15 IT IS SO ORDERED.



16 /s/ Frances M. Tydingco-Gatewood
 17 Designated Judge
 18 Dated: Mar 09, 2016

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 23 ³ The CNMI Government cites to two federal statutes to support this contention,
 24 specifically Sections 959 and 960 of Title 28, United States Code. Section 959 permits trustees and
 25 receivers to be sued without leave of court for “their acts or transaction in carrying on the business
 26 connected with” the property under receivership and requires such appointed trustees and receivers
 27 to “manage and operate the property in his possession . . . according to the requirements of the
 28 valid laws of the State in which such property is situated.” 28 U.S.C. § 959. Section 960 provides,
 among other things, that “officers and agents conducting any business any business under authority
 of a United States court shall be subject to all Federal, State and local taxes applicable to such
 business to the same extent as if it were conducted by an individual or corporation.” 28 U.S.C.
 § 960(a).