

Internal Revenue Service

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Date:
June 06, 2019

Trust =

Debtors =

Date 1 =

Date 2 =

Date 3 =

Date 4

Date 5 =

Dear

This responds to a letter dated November 7, 2018, submitted on behalf of Trust, requesting a ruling regarding the classification of Trust as a liquidating trust under § 301.7701-4(d) of the Procedure and Administration Regulations.

FACTS

The information submitted states that, on Date 1, Debtors each filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court. The bankruptcy cases of the Debtors were consolidated for procedural purposes and were jointly administered. On Date 2, the Bankruptcy Court entered a confirmation order ("Order") confirming an amended Plan of Reorganization ("Plan"). In accordance with the Plan and the Order, Trust was established and funded on Date 3 ("Trust Effective Date"). The initial term of Trust was set to expire five years from the Trust Effective Date. The Bankruptcy Court approved three one-year term extensions of Trust, with the last one ending on Date 4 unless the term is further extended.

Pursuant to the provisions of the Plan and the Trust agreement, Trust was created for the purpose of liquidating the assets of Trust, with no objective to continue or engage in the conduct of a trade or business except to the extent reasonably necessary to, and consistent with, the liquidating purpose of Trust. Trust shall not receive or retain cash in excess of a reasonable amount to meet claims and contingent liabilities (including disputed claims) or to maintain the value of the assets during liquidation. Cash not available for distribution and cash pending distribution will be held in demand and time deposits, such as short-term certificates of deposit, in banks or other savings institutions, or other temporary, liquid investments such as Treasury bills. Trust is required to distribute to the beneficiaries of Trust at least annually its net income and all net proceeds from the sale of Trust's assets, except that Trust may retain an amount of net proceeds or net income reasonably necessary to maintain the value of the property or to meet claims or contingent liabilities.

Trust provides that the beneficiaries of Trust will be treated as the grantors and deemed owners of Trust. It further provides that the parties will value all assets transferred to Trust consistently and use such values for all federal income tax purposes.

Trust provides that the trustee of Trust shall file tax returns as a grantor trust pursuant to § 1.671-4(a) of the Income Tax Regulations.

Trust, consistent with the requirements set out in Rev. Proc. 94-45, 1994-2 C.B. 684, indicates that the transfer of Trust assets to Trust have been treated for all federal tax purposes as a deemed transfer by the Debtor to the beneficiaries followed by a deemed transfer by the beneficiaries to Trust.

Trust represents that, from its establishment, Trust has been formed and operated consistent with the conditions set out in Rev. Proc. 94-45. Trust now represents that certain developments, generally beyond the control of the trustee of Trust, have occurred that make it impossible to completely liquidate Trust by Date 4, the end of its current extension. The Trust agreement provides that the aggregate of all allowed extensions shall not exceed three years, unless the trustee receives a favorable ruling from the Internal Revenue Service that any further extension would not adversely affect

the status of Trust as a liquidating trust under § 301.7701-4(d) for federal income tax purposes.

LAW AND ANALYSIS

Section 671 of the Internal Revenue Code provides that where it is specified in subpart E that the grantor or another person shall be treated as the owner of any portion of a trust, there then shall be included in computing the taxable income and credits of the grantor or the other person those items of income, deductions, and credits against tax of the trust that are attributable to that portion of the trust to the extent that such items would be taken into account under chapter 1 of the Code in computing taxable income or credits against the tax of an individual.

Section 1.671-4(a) provides that, except as provided in § 1.671-4(b)(1) and § 1.671-5, items of income, deduction, and credit attributable to any portion of a trust which, under the provisions of subpart E (§ 671 and following), part I, subchapter J, chapter 1 of the Code, are treated as owned by the grantor or another person should not be reported by the trust on Form 1041, "U.S. Income Tax Return for Estates & Trusts", but should be shown on a separate statement attached to that form.

Section 677(a) provides, in part, that the grantor shall be treated as the owner of any portion of a trust, whether or not the grantor is treated as such owner under § 674, whose income without the approval or consent of any adverse party is, or, in the discretion of the grantor or a non-adverse party, or both, may be (1) distributed to the grantor or the grantor's spouse; or (2) held or accumulated for future distribution to the grantor or the grantor's spouse.

Section 301.7701-4(d) provides that certain organizations which are commonly known as liquidating trusts are treated as trusts for purposes of the Internal Revenue Code. An organization will be considered a liquidating trust if it is organized for the primary purpose of liquidating and distributing the assets transferred to it, and if its activities are all reasonably necessary to, and consistent with, the accomplishment of that purpose. A liquidating trust is treated as a trust for purposes of the Code because it is formed with the objective of liquidating particular assets and not as an organization having as its purpose the carrying on of a profit-making business which normally would be conducted through business organizations classified as corporations or partnerships. However, if the liquidation is unreasonably prolonged or if the liquidation purpose becomes so obscured by business activities that the declared purpose of liquidation can be said to be lost or abandoned, the status of the organization will no longer be that of a liquidating trust.

Rev. Proc. 94-45 provides the conditions under which the Service will consider issuing advance rulings classifying certain trusts as liquidating trusts under § 301.7701-4(d). Rev. Proc. 94-45 states that the Service will issue a ruling classifying an entity created

pursuant to a bankruptcy plan under Chapter 11 of the Bankruptcy Code, 11 U.S.C. § 1101, et. seq. (1988), as a liquidating trust under § 301.7701-4(d) if certain specified conditions are met.

CONCLUSIONS

Based on the information submitted and the representations made, we conclude that the conditions of Rev. Proc. 94-45 have been satisfied. Accordingly, based on the representations made and the information submitted, we rule that Trust is classified for federal tax purposes as a liquidating trust under § 301.7701-4(d) and the extension of Trust's term to Date 5 will not affect that determination. Therefore, Trust will continue to be treated as a grantor trust and the beneficiaries of Trust will continue to be treated as the owners of Trust under §§ 671 and 677.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to Trust's authorized representatives.

Sincerely,

Laura C. Fields

Laura C. Fields
Senior Technician Reviewer, Branch 1
(Passthroughs & Special Industries)

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes