

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:B01- PLR-103309-03
Date:
April 3 2003

Legend:

Trust =

Debtors =

Trustee =

Plan =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Dear :

This letter is in response to your request, dated November 12, 2002, on behalf of Trust, seeking a ruling on the classification of Trust under section 301.7701-4(d) of the Procedure and Administration Regulations.

Facts

Based on the facts presented and representations made, we understand the facts to be as follows. Debtors, on Date 1, filed a petition under Chapter 11 of the United States Bankruptcy Code for bankruptcy protection. On or about Date 2, Debtors and the Official Unsecured Creditors filed Plan with the Bankruptcy Court. Pursuant to the confirmation of the Plan on Date 3 and the order signed on Date 4 by the Bankruptcy Court, the Trust was created and Trustee was appointed as Trust's trustee.

The Liquidating Trust Indenture provides that Trust is created solely to implement the terms of the Plan. The purposes of the Trust are to manage, conserve and protect the value of the Trust for the benefit of the Beneficiaries, including, but not limited to, collecting and liquidating the Trust, filing objections to claims, pursuing claims and causes of actions vested in the Trust, and distributing to the Beneficiaries the proceeds from the liquidation of the Trust pursuant to the Plan.

The Liquidating Trust Indenture provides that for federal tax purposes, the transfer of assets to the Trust will be treated as a deemed transfer to the Beneficiaries followed by a deemed transfer by the Beneficiaries to the Trust.

The Liquidating Trust Indenture generally provides that the Trust will terminate no later than five years after its formation.

The Liquidating Trust Indenture provides that Trustee shall file tax returns as a grantor trust pursuant to section 1.671-4(a) or (b)(3) of the Income Tax Regulations. As grantor trust, the Beneficiaries of the Trust shall be treated as its grantors and deemed owners.

The Liquidating Trust Indenture generally provides that Trustee shall distribute to the Beneficiaries at least one time annually the net income accrued on the Trust through the date of distribution as well as all net proceeds from the sale of assets in excess of amounts reasonably necessary to maintain the value of the property or to meet claims or contingent liabilities (including disputed claims).

The Liquidating Trust Indenture provides, generally, for the investment powers of Trustee to be limited to the powers to invest in demand and time deposits, or temporary investments such as short-term certificates of deposits or Treasury bills.

The Liquidating Trust Indenture contains representations that Trustee will make continuing efforts to dispose of the Trust's assets, make timely distributions, and not unduly prolong the duration of the Trust.

Law and Analysis

Section 671 of the 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 on 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) of the regulations provides that except as provided in section 1.671-4(b)(1) and (2), items of income, deduction, and credit attributable to any portion of a trust which, under the provisions of subpart E (section 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, but should be shown on a separate statement attached to that form.

Section 677(a) of the Code 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 section 674, whose income without the approval or consent of any adverse party is, or, in the discretion of the grantor or a nonadverse 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) of the Procedure and Administration Regulations 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 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. section 1101, et seq. (1988), as a liquidating trust under section 301.7701-4(d) of the Procedure and Administration Regulations if certain specified conditions are met. Based on the information submitted and the representations made, we conclude that the conditions of Rev. Proc. 94-45 have been satisfied.

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Conclusion

Accordingly, based on the representations made and the information submitted, we conclude that Trust will be classified for federal income tax purposes as a liquidating trust under section 301.7701-4(d) of the Procedure and Administration Regulations.

Except as specifically set forth above, no opinion is expressed concerning the federal income tax consequences of the facts described under any other provision of the Internal Revenue Code.

This ruling is directed only to the taxpayer(s) 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, no copy of this letter will be sent to the taxpayer's authorized representative.

Sincerely,

David R. Haglund
Senior Technician Reviewer
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)

Copy for section 6110 purposes
Copy of this letter