

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B01

PLR-163789-03

Date:

November 12, 2004

In Re:

Legend

Debtors =

Trust =

Plan =

D1 =

D2 =

D3 =

Dear _____ :

This is in response to your letter dated October 29, 2003, 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

Debtors filed voluntary petitions under Chapter 11 of the Bankruptcy Code in the Bankruptcy Court on D1 and thereafter. On D2, Debtors submitted to the Bankruptcy Court their Plan. On D3, Plan was confirmed by the Bankruptcy Court.

Pursuant to the provisions of Plan, Trust will be created to hold and pursue certain litigation claims and causes of action of Debtors for the sole purpose of liquidating the assets of Trust, with no objective to continue or engage in the conduct of

a trade or business. The trustee of Trust will liquidate and convert to cash the assets of Trust and make timely distributions. The trustee of Trust will distribute at least annually to the holders of Trust interests all net cash income plus all net cash proceeds from the liquidation of assets. However, Trust may retain such amounts (i) as are reasonably necessary to meet contingent liabilities and to maintain the value of the assets of Trust during liquidation, (ii) to pay reasonable administrative expenses (including any taxes imposed on Trust or in respect of the assets of Trust), and (iii) to satisfy other liabilities incurred or assumed by Trust in accordance with Plan or the Trust agreement.

Plan provides that the right and power of the trustee of Trust to invest assets transferred to Trust, the proceeds thereof, or any income earned by Trust will be generally limited to the right and power to invest in readily marketable securities or instruments issued by a person other than Debtors. Trust will generally terminate no later than the fifth anniversary of the Effective Date defined in Plan.

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

Plan provides that a reserve will be established for disputed claims. All of Trust's income will be treated as subject to tax on a current basis as described in Plan.

Plan 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.

Plan, consistent with the requirements set out in Rev. Proc. 94-45, 1994-2 C.B. 684, provides that the transfer of Trust assets to Trust will be treated for all federal tax purposes (e.g., §§ 61(a)(12), 483, 1001, 1012, and 1274 of the Internal Revenue Code) as a deemed transfer to the beneficiary-creditors followed by a deemed transfer by the beneficiary-creditors to Trust.

Law and Analysis

Section 671 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, 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 (2), 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, 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 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 obscure 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).

Conclusions

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) of the regulation 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.

Accordingly, based on the representations made and the information submitted, we conclude that (1) Trust will be classified for federal tax purposes as a liquidating trust under § 301.7701-4(d) of the regulation, (2) Trust will be a grantor trust, and (3) the beneficiaries of Trust will be treated as the owners of Trust and will be taxed accordingly.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of the facts described under any other provision of the Internal Revenue Code.

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.

Sincerely,

/s/ David R. Haglund

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

Enclosures (2)

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