

According to the information submitted, Debtor and its subsidiaries filed voluntary petitions under Chapter 11 of the Bankruptcy Code in the Bankruptcy Court in Date 1. In Date 2, the Plan submitted to the Bankruptcy Court by the Debtor was confirmed and became effective on Date 3.

Pursuant to the provisions of Trust and of the Plan, Trust will be created to hold and pursue certain litigation claims and causes of action of Debtor 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 trustees of Trust will liquidate and convert to cash the assets of Trust and make timely distributions. The trustees 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, pursuant to the Plan, Trust may retain such amounts as are reasonably necessary (i) to meet ongoing expenses, claims and contingent liabilities; and (ii) to maintain the value of the assets of Trust during liquidation.

The Plan and Trust provide that the investment powers of the trustees of Trust will be generally limited to those reasonably necessary to maintain the value of the assets and to further the liquidating purpose of Trust; but otherwise such investment powers will be limited to demand and time deposits, such as short term certificates of deposits in banks or other savings institutions or other temporary, liquid investments, such as Treasury bills.

The Plan and Trust provide that the trustees of Trust shall file tax returns as a grantor trust pursuant to § 1.671-4(a) of the Income Tax Regulations.

The Plan and Trust, consistent with the requirements set out in Rev. Proc. 94-45, 1994-2 C.B. 684, provide that the transfer of Trust assets to Trust will be treated for all federal tax purposes (for example, §§ 61(a)(12), 483, 1001, 1012, and 1274) as a deemed transfer to the creditor and equityholder beneficiaries followed by a deemed transfer by the creditor and equityholder beneficiaries 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 purposes 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 that 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 that is or will be created pursuant to a bankruptcy plan under Chapter 11 of the Bankruptcy Code, 11 U.S.C. § 1101, et. seq. (1998), as a liquidating trust under § 301.7701-4(d) of the 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.

Accordingly, based on the representations made and the information submitted, we conclude that (1) Trust will be classified as a liquidating trust for federal tax purposes under § 301.7701-4(d), and (2) the creditor and equityholder beneficiaries of Trust will be treated as the owners of Trust under §§ 671 and 677.

Except as expressly provided herein, we express or imply no opinion 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) 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 your authorized representatives.

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.

Sincerely,

/s/

James A. Quinn
Senior Counsel, Branch 3
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)
Copy of this letter
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cc: