

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact: _____, ID No.

Telephone Number:

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Date:
November 27, 2015

Legend

Debtor =

Trust =

n1 =

Date1 =

Date2 =

Date3 =

Date4 =

Date5 =

Date6 =

Date7 =

Date8 =

Dear _____ :

This responds to a letter dated June 12, 2015, 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 Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court on Date1. On Date2, Debtor submitted its Modified Second Amended Joint Plan (the "Plan") to the Bankruptcy Court. On Date3, the Bankruptcy Court confirmed the plan, approving the establishment of Trust to facilitate the liquidation and distribution of its assets. On Date4, Trust was established with an initial term of n1 years ending on Date5. On Date6, the Bankruptcy Court extended Trust's term until Date7.

Pursuant to the provisions of the Plan and trust agreement, Trust was created for the primary purpose of liquidating the assets of Trust, with no objective to conduct 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 assets such as Treasury bills. Trust is required, under the terms of Trust, 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, 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 as a deemed transfer by Debtor to the beneficiaries followed by a deemed transfer by the beneficiaries to Trust.

Trust provides that the beneficiaries of Trust will be treated as the grantors and deemed owners of Trust. 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. It further provides that the parties will value all assets transferred to Trust consistently and use such values for all federal income tax purposes. All of Trust's income is subject to tax on a current basis and allocable to the beneficiaries pro rata based on their respective interests in Trust.

Trust represents that, as of the date of its ruling request submission, Trust has made significant progress in orderly winding-down and liquidating the former business of Debtor. Trust further represents that, from its establishment, Trust has been formed

and operated consistent with the conditions set forth in Rev. Proc. 94-45. Trust now represents that certain developments, generally beyond the control of the trustee of Trust, have occurred that require additional time and effort to facilitate the recovery of certain remaining Trust assets and to complete the liquidation of Trust.

Under Section 5.7(p) of the Plan, multiple extensions of Trust's term may be obtained so long as the Bankruptcy Court determines, upon motion within the six-month period prior to the expiration of each extended term, that an extension is necessary to facilitate or complete the recovery and liquidation of Trust's assets. Trust represents that it has prepared and will timely file a motion with the Bankruptcy Court requesting an additional n1 year extension to Date8. Assuming Trust's term is extended, Trust represents that the trustee will make continuing efforts to dispose of Trust's assets, make timely distributions, and not unduly prolong the duration of Trust.

Trust requests a ruling that Trust will be classified for federal income tax purposes as a liquidating trust under § 301.7701-4(d) and Rev. Proc. 94-45; and that a further extension to Date8 will not adversely affect the determination that Trust is a liquidating trust.

LAW AND ANALYSIS

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 (the "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 if 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). 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.

Section 3.06 of Rev. Proc. 94-45 provides that the trust instrument must contain a fixed or determinable termination date that is generally not more than five years from

the date of creation of the trust and that is reasonable based on all the facts and circumstances. If warranted by the facts and circumstances, provided for in the plan and trust instrument, and subject to the approval of the Bankruptcy Court with jurisdiction over the case upon a finding that the extension is necessary to the liquidating purpose of the trust, the term of the trust may be extended for a finite term based on its particular facts and circumstances. The trust instrument must require that each extension be approved by the court within 6 months of the beginning of the extended term.

CONCLUSIONS

Based on the information submitted and the representations made, we conclude that the conditions of Rev. Proc. 94-45 have been satisfied. Accordingly, we rule that Trust will be classified for federal income tax purposes as a liquidating trust under § 301.7701-4(d) of the regulations. Additionally, based on the facts and circumstances of this case and on the representations made, we rule that an extension of time of Trust's term to Date8 will not adversely affect the determination that Trust is a liquidating trust under § 301.7701-4(d).

Except as expressly set forth above, we express or imply no opinion concerning the federal income tax consequences of the facts described above under any other provision of the 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.

The ruling contained in this letter is 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 materials submitted as part of the ruling request, it is subject to verification on examination.

In accordance with the power of attorney on file with this office, a copy of this letter will be sent to Trust's authorized representative.

Sincerely,

Holly Porter
Branch Chief, Branch 3
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2):

Copy of this letter

Copy for § 6110 purposes