

This letter responds to your request dated July 24, 2018, and subsequent correspondence, requesting a ruling on behalf of the Liquidating Trust. Specifically, you requested an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to make an election under § 1.468B-9(c)(2)(ii) of the Income Tax Regulations for Year 1.

FACTS

On Date 1, the Debtors filed voluntary petitions in the Court seeking relief under Chapter 11 of the Bankruptcy Code. On Date 2, the Court confirmed the Plan, including the proposed Trust Agreement, and appointed Trustee to serve in the subject capacity.

Under the terms of the Plan, all of the assets and liabilities of the Debtors were transferred to the Liquidating Trust for the Trustee to administer for the benefit of the holders of various impaired classes of claims and equity interests (collectively, "Trust Beneficiaries") in full satisfaction of those claims. The Liquidating Trustee was to liquidate trust assets and distribute the net proceeds to the Trust Beneficiaries after the funding of reserves for the various classes of higher priority claims.

The intent of the Plan and Trust Agreement was that the Liquidating Trust qualify as a grantor trust and that the Liquidating Trustee would file tax returns for the Liquidating Trust as a grantor trust pursuant to § 1.671-4(a). Instead of taxing any reserves established for disputed claims as part of the Liquidating Trust, the Plan and Trust Agreement also empowered the Liquidating Trustee to use his discretion to determine the best way to report for tax purposes any reserves, including the ability to file an election to treat them as a disputed ownership fund ("DOF") within the meaning of § 1.468B-9.

Because a significant number of claims that were higher in priority to the claims and equity interests held by the Trust Beneficiaries were disputed and the total amount of disputed claims was in excess of the value of the Liquidating Trust's assets, the trust's assets were completely held in reserve pending the Trustee's ongoing process of reconciling and resolving the disputed claims. As a result, no distribution or other satisfaction has been made on account of the claims held by the Trust Beneficiaries.

The Trustee engaged the Accountants to prepare the Year 1 Federal income tax returns for the Liquidating Trust. The Accountants had previously prepared the Debtors' pre-bankruptcy income tax returns for the prior tax year, and had experience preparing tax returns for liquidating trusts. When preparing the Liquidating Trust's Year 1 tax returns, the Accountants advised the Trustee that it was necessary to file as a complex trust because the information necessary to issue information statements to the beneficiaries that was required for the trust to be treated as a grantor trust was not available.

Neither the Accountants nor any other adviser informed the Trustee that he had the option to file an election to treat any reserve for disputed claims as a DOF. The Trustee concluded that he had no reason to question the Accountants' recommendation and accepted their advice that the trust should file its Federal income tax return as a complex trust.

On Date 3, the trust timely filed its Federal income tax return for Year 1 as a complex trust and did not file any DOF election for any portion of the trust. The Accountants included Form 8275 Disclosure Statement with the Year 1 return noting that the trust was unable to file as a grantor trust and that it was filing as a complex trust.

On Date 4, the Accountants raised the issue with the Trustee as to whether the trust could issue information statements to the Trust Beneficiaries for the upcoming Year 2 return for the trust. In response, the Trustee asked the Trust's Tax Advisors to assist the Accountants on the proper preparation of the Year 2 tax return. During this process, the Trust's Tax Advisors learned that the trust had filed its Year 1 return as a complex trust and had not made an election to be treated as a DOF. The Trust's Tax Advisors advised the Trustee that more explicit legal authority is available regarding how the trust should report its taxable income if it were treated as a DOF instead of as a complex trust. The Trustee accordingly filed this ruling request before the due date for the Year 2 tax return.

RULING REQUESTED

Trustee requests an extension of time under §§ 301.9100-1 and 301.9100-3 to file any necessary elections under § 1.468B-9(c)(2)(ii) to treat the eligible portion of the Liquidating Trust as a disputed ownership fund effective for Year 1.

LAW AND ANALYSIS

Section 468B(g)(1) provides that “[n]othing in any provision of law shall be construed as providing that an escrow account, settlement fund, or similar fund is not subject to current income tax.” Section 468B(g)(1) authorizes the issuance of regulations providing for the taxation of any such account or fund whether as a grantor trust or otherwise. Section 1.468B-9 regarding disputed ownership funds was issued pursuant to section 468B(g).

Section 1.468B-9(b)(1) provides that a disputed ownership fund means an escrow account, trust, or fund that (i) is established to hold money or property subject to conflicting claims of ownership, (ii) is subject to the continuing jurisdiction of a court, (iii) requires the approval of the court to pay or distribute money or property to, or on behalf of, a claimant, transferor, or transferor-claimant, and (iv) is not a qualified settlement fund under § 1.468B-1, a bankruptcy estate (or part thereof) resulting from the

commencement of a case under title 11 of the United States Code, or a liquidating trust under § 301.7701-4(d) of this chapter (except as provided in §1.468B-9(c)(2)(ii)).

Under § 1.468B-9(c)(2)(ii), the trustee of a liquidating trust established pursuant to a plan confirmed by the court in a case under title 11 of the United States Code may, in the liquidating trust's first taxable year, elect to treat an escrow account, trust, or fund that holds assets of the liquidating trust that are subject to disputed claims as a disputed ownership fund. Pursuant to this election, creditors holding disputed claims are not treated as transferors of the money or property transferred to the disputed ownership fund. A trustee makes the election by attaching a statement to the timely filed Federal income tax return of the disputed ownership fund for the taxable year for which the election becomes effective. The election statement must include a statement that the trustee will treat the escrow account, trust, or fund as a disputed ownership fund and must include a legend, "§ 1.468B-9(c) Election," at the top of the page. The election may be revoked only upon consent of the Commissioner by private letter ruling.

Section 301.9100-1(c) provides that the Commissioner has the discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make certain regulatory elections. Section 301.9100-1(b) defines a regulatory election as an election whose due date is prescribed by a regulation published in the Federal Register, or in a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2.

The requested election is a regulatory election as defined under § 301.9100-1(b) because the due date of the election is prescribed in § 1.468B-9(c)(2)(ii). Trustee's request is analyzed under the requirements of § 301.9100-3 because the automatic provisions of § 301.9100-2 are not applicable.

Requests for relief under § 301.9100-3 will be granted when a taxpayer provides evidence to establish to the satisfaction of the Commissioner (1) that the taxpayer acted reasonably and in good faith, and (2) that granting relief will not prejudice the interests of the Government. See § 301.9100-3(a).

Section 301.9100-3(b)(1) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer: (i) requests relief before the failure to make the regulatory election is discovered by the Internal Revenue Service; (ii) failed to make the election because of intervening events beyond the taxpayer's control; (iii) failed to make the election because, after exercising reasonable diligence, the taxpayer was unaware of the necessity for the election; (iv) reasonably relied on the written advice of the

Service; or (v) reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Section 301.9100-3(b)(3) provides that a taxpayer is deemed not to have acted reasonably and in good faith if the taxpayer: (i) seeks to alter a return position for which an accuracy-related penalty was or could be imposed under § 6662 at the time the taxpayer requests relief and the new position requires or permits a regulatory election for which relief is requested; (ii) was informed in all material respects of the required election and related tax consequences and chose not to file the election; or (iii) uses hindsight in requesting relief.

Section 301.9100-3(c)(1)(i) provides that the interests of the Government are prejudiced if granting relief would result in the taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made (taking into account the time value of money). The section also provides that, if the tax consequences of more than one taxpayer are affected by the election, the Government's interests are prejudiced if extending the time for making the election may result in the affected taxpayers, in the aggregate, having a lower tax liability than if the election had been timely made.

Further, § 301.9100-3(c)(1)(ii) provides, in part, that the interests of the Government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made, or any taxable years that would have been affected by the election had it been timely made, are closed by the period of limitations on assessment under § 6501(a) before the taxpayer's receipt of a ruling granting relief under this section.

CONCLUSION

The information and representations furnished by the Trustee have established that the Trustee has acted reasonably and in good faith in filing this request. Furthermore, granting an extension will not prejudice the interests of the Government. Accordingly, an extension of time is hereby granted under § 301.9100-3 for the Trustee to file any necessary § 1.468B-9(c) election statements for Year 1. This extension shall be for a period of 45 days from the date of this ruling. Please attach a copy of this ruling to the election statement when it is filed.

PROCEDURAL MATTERS

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 limited to the timeliness of the filing of any necessary § 1.468B-9(c) elections. This ruling does not relieve the taxpayer from any penalty that it may owe as a result of the failure to timely file its Federal income tax return(s).

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 your authorized representatives.

A copy of this letter must be attached to any Federal income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

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,

Roy A. Hirschhorn
Branch Chief, Branch 6
Office of Associate Chief Counsel
(Income Tax & Accounting)