

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:
August 05, 2020

LEGEND

Trust =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Liquidating =

Trustee

Debtor =

Plan =

Dear :

This responds to a letter dated January 17, 2020, and subsequent correspondence, 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 on Date 1 Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court. On Date 2, Plan was confirmed by the Bankruptcy Court and became effective Date 3.

The initial term of Trust was for three years ending Date 4, but could be extended by request to the Bankruptcy Court for successive fixed terms not to exceed three years. The initial term of the Trust expired before the Liquidating Trustee completed its duties under the Plan and trust agreement. On motion to the Bankruptcy Court, Liquidating Trustee requested an extension of the Trust term to Date 5, *nunc pro tunc* to Date 4, arguing the extension was necessary to implement the Plan and the trust agreement. On Date 6, the Bankruptcy Court granted the Liquidating Trustee's motion. Simultaneously with submitting its request for this ruling, Liquidating Trustee has made an additional request to the Bankruptcy Court for an extension of the Trust term until Date 7.

Pursuant to the Plan and the trust agreement, the Trust was established to oversee and effect the orderly liquidation and conversion to cash of those assets conveyed to the Trust pursuant to the Plan, resolve claims to be satisfied by the Trust, review and, or pursue causes of action assigned to the Trust, make any and all distributions by the Trust provided for in the Plan to the beneficiaries in accordance with Treas. Reg. Sec. 301.7701-4(d), and administer and pay the Liquidating Trustee's fees and expenses.

In accordance with the Plan, the trust agreement states that Trust was created for the primary purpose of liquidating the assets transferred to it, with no objective to continue or engage in the conduct of a trade or business except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Trust.

Pursuant to the trust agreement, the beneficiaries of Trust will be treated as the grantors, deemed owners, and beneficiaries of Trust for federal tax purposes consistent with the requirements of Rev. Proc. 94-45, 1994-2 C.B. 684. The trust agreement requires that the Liquidating Trustee file returns for Trust as a grantor trust pursuant to Treas. Reg. § 1.671-4(a). Trust is required to distribute to the beneficiaries of Trust at least annually its net income and all net proceeds from the sale of the assets of Trust, except that Trust may retain an amount of net proceeds or net income reasonably necessary to maintain the value of the property of Trust or pay or contingent liabilities of Trust.

Under the trust agreement, Trust shall not receive or retain cash in excess of a reasonable amount to meet claims and contingent liabilities or to maintain the value of the assets during liquidation. Cash not available for distribution and cash pending distribution will be held in cash, cash equivalents, U.S. Treasury securities, money market investments, and similar investments, but limited to those investments permitted under § 301.7701-4(d).

The Liquidating Trustee represents that, from its establishment, Trust has been formed and operated consistent with the conditions set forth in Rev. Proc. 94-45. Liquidating Trustee further represents that he will make continuing efforts to dispose of

the assets of the Trust, make timely distributions, and not unduly prolong the duration of the Trust. Liquidating Trustee also represents that certain continuing adversary proceedings have made it impossible to completely liquidate by Date 5, the end of its first period of extension. The trust agreement provides that the aggregate of all allowed extensions shall not exceed three years, unless the trustee receives a favorable ruling from the Internal Revenue Service that any further extensions would not adversely affect the status of Trust as a liquidating trust under § 301.7701-4(d). Therefore, Trust requests a ruling that an extension of the term of Trust by an additional year ending on Date 7 will not adversely affect its status as a liquidating trust under § 301.7701-4(d).

LAW AND ANALYSIS

Section 671 of the Internal Revenue 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 in 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) provides that, except as provided in § 1.671-4(b)(1) and § 1.671-5, 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, "U.S. Income Tax Return for Estates & Trusts", but should be shown on a separate statement attached to that form.

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 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 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., as a liquidating trust under § 301.7701-4(d) if certain 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 the creation of the trust and that is reasonable based on all of 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 time 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, based on the representations made and the information submitted, we rule that Trust is classified for federal tax purposes as a liquidating trust under § 301.7701-4(d) and the extension of Trust's term to Date 7 will not adversely affect that determination. Therefore, Trust will continue to be treated as a grantor trust and the beneficiaries of Trust will continue to be treated as the owners of Trust under § 671 to the extent Trust otherwise qualifies as such.

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, we are sending a copy of this letter to Trust's authorized representatives.

Sincerely,

Adrienne M. Mikolashek
Branch Chief, Branch 3
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes

cc: