

FACTS

The information submitted states that Debtors filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court on Date 1. On Date 2, the Bankruptcy Court approved Debtors' plan of reorganization (the "Plan") with an effective date of Date 3.

On Date 3, Trust was established as part of the Plan with an initial term ending on Date 4. Because of unresolved litigation, the Bankruptcy Court subsequently approved the extension of the term of Trust to Date 5, then to Date 6, then to Date 7, and then to Date 8. As the litigation claims remain unresolved, the trustee of Trust intends to file a motion with the Bankruptcy Court to extend the termination date of Trust to Date 9, and to request further term extensions with the Bankruptcy Court, as necessary, until the final resolution of all legal claims and subsequent distributions and other actions pursuant to the Plan.

Pursuant to the provisions of the Plan and the Trust agreement, Trust was created for the purpose of liquidating, converting assets to cash and distributing the assets of Trust in accordance with § 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business. Trust is not permitted to receive or retain cash in excess of a reasonable amount necessary to make applicable distributions to the beneficiaries, to satisfy any liabilities of Trust and to establish and maintain reserves contemplated by the Plan. Cash not available for distribution and cash pending distribution is to 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 the Trust agreement, 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 Trust's assets or to meet claims or contingent liabilities.

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

The Trust agreement 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.

The Trust agreement, consistent with the requirements set out in Rev. Proc. 94-45, 1994-2 C.B. 684, provides that the transfer of Trust's assets to Trust will be treated for all federal tax purposes as a deemed transfer by Debtors to the beneficiaries followed by a deemed transfer by the beneficiaries to Trust.

The trustee of Trust represents that, from its establishment, Trust has been formed and operated consistent with the conditions set forth in Rev. Proc. 94-45. The trustee of Trust further represents that he will make continuing efforts to dispose of the assets of Trust, make timely distributions, and not unduly prolong the duration of Trust. The trustee of Trust also represents that certain continuing adversary proceedings have made it impossible to completely liquidate by Date 8. The Trust agreement provides that the aggregate of all allowed extensions shall not exceed three years, unless the trustee of Trust 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).

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 shall then 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 which 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 purpose 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.

CONCLUSION

Based on the information submitted and on the representations made, we rule that any further extension of Trust's term to Date 9 will not adversely affect Trust's classification as a liquidating trust under § 301.7701-4(d). 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,

Joy C. Spies
Senior Technician Reviewer, Branch 1
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure

Copy for § 6110 purposes

cc: