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Rev. Proc. 94-45, 1994-28 I.R.B. 124, 1994-2 C.B. 684, 1994 WL 322710 (IRS RPR)

Internal Revenue Service (I.R.S.)

Revenue Procedure

Published: July 11, 1994

26 CFR 601.201: Rulings and determination letters.

(Also Part I, Section 7701; 301.7701-4.)

SECTION 1. PURPOSE

This revenue procedure modifies and amplifies Rev. Proc. 82-58, 1982-2 C.B. 847, and Rev. Proc. 91-15, 1991-1 C.B. 484. It specifies revised conditions under which the Internal Revenue Service will consider issuing advance rulings classifying entities created pursuant to bankruptcy plans under Chapter 11 of the Bankruptcy Code, 11 U.S.C. section 1101, et seq. (1988), as liquidating trusts under § 301.7701-4(d) of the Procedure and Administration Regulations. It also outlines the income reporting requirements for the trust. This revenue procedure also provides a checklist that must accompany all such ruling requests.

SEC. 2. SCOPE AND BACKGROUND

The operating rules published in this revenue procedure are intended solely to assist taxpayers and their representatives in preparing ruling requests. These operating rules do not define, as a matter of law, the circumstances under which an organization will be classified as a liquidating trust for federal income tax purposes. That determination can be made only after examination of all the facts and circumstances in connection with the operation and activities of the trust. An organization will be considered a liquidating trust if it is organized for the primary purpose of liquidating and distributing assets transferred to it, and if its activities are all reasonably necessary to, and consistent with, accomplishing that purpose. If the liquidation is unreasonably prolonged, or if the liquidating purpose becomes so obscured by business activities that the declared purpose of liquidation is lost or abandoned, the status of the organization will no longer be that of a liquidating trust. Designated settlement funds under § 468B(d) and qualified settlement funds under § 1.468B-1 are not within the scope of this revenue procedure.

A ruling requested under this revenue procedure will ordinarily be issued if the taxpayer complies with the rules in this revenue procedure and the pertinent provisions of the Internal Revenue Code, Income Tax Regulations, revenue rulings, and other revenue procedures. In appropriate circumstances, a taxpayer may be asked

to enter into a closing agreement as a condition to the issuance of a letter ruling.

The Service receives many requests for rulings in which the information identified as necessary in the appropriate revenue procedure is not provided. In those cases, it is necessary to obtain additional information from the taxpayer before the ruling request can be considered. This is time consuming for both Service personnel and the taxpayer and delays the issuance of the ruling letter.

Careful completion of the checklist provided in this revenue procedure will facilitate processing a ruling request under § 301.7701-4(d) of the regulations because all of the information required by this revenue procedure will be in the request. This avoids delay and permits rulings to be issued promptly. A completed checklist must accompany all ruling requests submitted pursuant to this revenue procedure. A reproduction of the checklist, the same in all material respects as it appears in this revenue procedure, may be used.

### SEC. 3. GENERAL OPERATING RULES

A ruling generally will be issued that an entity is classified as a liquidating trust if the following conditions are met:

.01 The trust is or will be created pursuant to a confirmed plan under Chapter 11 of the Bankruptcy Code for the primary purpose, as stated in its governing instrument, 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.

.02 The plan and disclosure statement must explain how the bankruptcy estate will treat the transfer of its assets to the trust for federal income tax purposes. A transfer to a liquidating trust for the benefit of creditors must be treated for all purposes of the Code as a transfer to creditors (e.g., sections 61(a)(12), 483, 1001, 1012, and 1274) to the extent that the creditors are beneficiaries of the trust. [FN1] The transfer will be treated as a deemed transfer to the beneficiary-creditors followed by a deemed transfer by the beneficiary-creditors to the trust. See Rev. Rul. 63-245, 1963-2 C.B. 144. To the extent that the trust is being created for the benefit of equity interest holders in the debtor, the transfer to the trust should be treated as a transfer to the equity interest holders. Id. The ruling request must explain whether the debtor or the bankruptcy estate will incur any tax liability from the transfer and, if so, how that liability will be paid.

.03 The plan, disclosure statement, and any separate trust instrument must provide that the beneficiaries of the trust will be treated as the grantors and deemed owners of the trust. See Bixby v. Commissioner, 58 T.C. 757 (1972), acq., 1975-2 C.B. 1, and section 677 of the Code. The trust instrument (which may be the plan if there is no separate trust instrument) must require that the trustee file returns for the trust as a grantor trust pursuant to § 1.671-4(a) of the Income Tax Regulations.

.04 The plan, disclosure statement, and any separate trust instrument must provide for consistent valuations of the transferred property by the trustee and the

creditors (or equity interest holders), and those valuations must be used for all federal income tax purposes.

.05 Whether or not a reserve is established for disputed claims, all of the trust's income must be treated as subject to tax on a current basis, and the ruling request must explain, in accordance with the plan, how the trust's taxable income will be allocated and who will be responsible for payment of any tax due.

.06 The trust instrument must contain a fixed or determinable termination date that is generally not more than 5 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.

.07 If the trust is to hold any operating assets of a going business, a partnership interest in a partnership that holds operating assets, or 50% or more of the stock of a corporation with operating assets, the ruling request must explain why it is necessary to retain these assets.

.08 If the trust is to receive transfers of listed stocks or securities or other readily marketable assets, the ruling request must explain the necessity for doing so. The trust is not permitted to receive or retain cash or cash equivalents 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.

.09 The investment powers of the trustee, other than those reasonably necessary to maintain the value of the assets and to further the liquidating purpose of the trust, must be limited to powers to invest in demand and time deposits, such as short-term certificates of deposit, in banks or other savings institutions, or other temporary, liquid investments, such as Treasury bills.

.10 The trust must be required to distribute at least annually to the beneficiaries its net income plus all net proceeds from the sale of assets, except that the trust may retain an amount of net proceeds or net income reasonably necessary to maintain the value of its assets or to meet claims and contingent liabilities (including disputed claims).

.11 The ruling request must contain representations that the trustee will make continuing efforts to dispose of the trust assets, make timely distributions, and not unduly prolong the duration of the trust.

.12 A trust that is a designated settlement fund under § 468B(d) of the Code or a qualified settlement fund under § 1.468B-1 of the regulations is governed by § 468B and the regulations thereunder, rather than by this revenue procedure.

#### SEC. 4. CHECKLIST

See Appendix A (Checklist for Classification of an Entity as a Liquidating Trust).

SEC. 5. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 82-58 and Rev. Proc. 91-15 are modified and amplified with respect to liquidating trusts created pursuant to Chapter 11 bankruptcy plans. These revenue procedures continue to apply without change to ruling requests concerning liquidating trusts created outside of Chapter 11 bankruptcy plans.

SEC. 6. EFFECTIVE DATE

This revenue procedure is effective on July 11, 1994, the date this revenue procedure appears in the Internal Revenue Bulletin.

DRAFTING INFORMATION

The principal author of this revenue procedure is J. Scott Hargis of the Office of Assistant Chief Counsel (Passthroughs & Special Industries). For further information regarding the revenue procedure, contact Mary A. Berman of the Office of Assistant Chief Counsel (Passthroughs and Special Industries) on (202) 622-3050 (not a toll-free call).

FN1. The tax consequences associated with the creation of a bankruptcy liquidating trust were not addressed in Holywell Corp. v. Smith, 112 S.Ct. 1021 (1992) (trustee of liquidating trust must file tax returns and pay tax due with respect to income and gains on trust assets).

APPENDIX A

CHECKLIST FOR CLASSIFICATION OF AN ENTITY AS A LIQUIDATING TRUST

NAME OF TAXPAYER \_

INSTRUCTIONS \_

The Service will be able to respond more quickly to your ruling request if it is carefully prepared and complete. Please use this checklist to ensure that your request is in order.

Answer each question by circling the appropriate answer: "Yes," "No," or "N/A" (not applicable). Where the answer is "yes" and space is provided, insert the name and page number of the appropriate document that contains the information. Throughout this document, references to the "trust instrument" refer to the plan if there is no separate trust instrument. The taxpayer or authorized representative should sign and date the checklist and place it on top of the request.

Failure to (1) provide the information required by this revenue procedure, (2) provide any other information required by other revenue procedures referred to in

this checklist, or (3) complete and submit the checklist with your ruling request will result in the request being returned to you. In extraordinary circumstances, the Service may retain the request and defer substantive consideration until the checklist is provided.

CIRCLE ONE

Yes No

ITEM

1. Have you read and complied with the requirements and procedures of the Associate Chief Counsel (Domestic), including the checklist, as set forth in the "-1" revenue procedure of the current calendar year, e.g., Rev. Proc. 94-1, 1994-1 I.R.B. 10? The "-1" revenue procedure is published in the first I.R.B. of the year.

Yes No

2. Have you attached the plan, disclosure statement, and any separate trust instrument?

Yes No

3. Does the ruling request contain a representation, and does the trust instrument provide, that the trust is organized 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?

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Yes No

4. Will or has the bankruptcy estate treated the transfer of its assets to the trust as a transfer to the creditors for all purposes of the Code (e.g., sections 61(a)(12),

		483, 1001, 1012, and 1274) to the extent that the creditors are beneficiaries of the trust, and do the plan and disclosure statement contain provisions requiring this treatment?
Yes	No	5. Does the ruling request explain whether any tax liability to the bankruptcy estate will result from the transfer and how the liability will be paid?
Yes	No	6. Do the plan, disclosure statement, and any separate trust instrument provide that the beneficiaries will be treated as the grantors and deemed owners of the trust?
Yes	No	7. Do the plan, disclosure statement, and any separate trust instrument provide for consistent valuations of the transferred property by the trustee and the creditors (or equity interest holders) and require that those valuations be used for all applicable reporting requirements?
Yes	No	8. Does the trust instrument require that the trustee file returns for the trust as a grantor trust pursuant to section 1.671-4(a) of the Income Tax Regulations?
Yes	No	9. Is there a reserve for disputed claims?
Page _____		
of _____		
Yes	No	10. Does the plan or trust instrument provide for

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of \_\_\_\_\_

Yes \_\_\_\_\_ No \_\_\_\_\_

current taxation of all trust earnings, including those retained in a disputed claims reserve?

Page \_\_\_\_\_

of \_\_\_\_\_

No. of Years \_\_\_\_\_

Yes \_\_\_\_\_ No \_\_\_\_\_ N/A \_\_\_\_\_

11. Does the trust instrument contain a fixed or determinable termination date that is reasonable based on all the facts and circumstances?

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of \_\_\_\_\_

Yes \_\_\_\_\_ No \_\_\_\_\_

12. Does the trust instrument provide for extensions of the trust term for finite periods only with court approval within six months of the beginning of the extended term?

Yes \_\_\_\_\_ No \_\_\_\_\_ N/A \_\_\_\_\_

13. Will the trust receive any operating assets of a going business, a partnership interest in a partnership that holds operating assets, or 50% or more of the stock of a corporation with operating assets of a going business? If the answer to this question is no, circle N/A for item 14 and go to item 15.

14. Does the ruling request explain the necessity for receiving the operating assets or ownership interest in an entity that holds operating assets?

Page \_\_\_\_\_

Yes No

15. Does the trust receive transfers of any listed stocks or securities or any other readily marketable securities? If the answer to this question is no, circle N/A for item 16 and go to item 17.

Yes No N/A

16. Does the ruling request explain the necessity for receiving these assets?

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Yes No

17. Does the plan or the trust instrument provide that the trust may not receive or retain cash or cash equivalents in excess of a reasonable amount to meet claims and contingent liabilities or to maintain the value of the assets during liquidation? Alternatively, does the ruling request contain a representation to the same effect?

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Yes No

18. Does the trust instrument provide that the investment powers of the trustee, other than those reasonably necessary to maintain the value of the assets and to the liquidating purpose of the trust, are limited to powers to invest in demand and time deposits, such as short-term certificates of deposit, in banks or other savings institutions, or other temporary, liquid investments, such as Treasury bills?

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Yes No

19. Does the trust instrument provide that the trust is required to distribute at least annually to the beneficiaries the net income of the trust plus all net proceeds from the sale of assets in excess of amounts reasonably necessary to maintain the value of the property or to meet claims or contingent liabilities (including disputed claims)?

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Yes No

20. Does the ruling request contain representations that the trustee will make continuing efforts to dispose of the trust assets, make timely distributions, and not unduly prolong the duration of the trust?

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of \_\_\_\_\_

Yes No

21. Does the trust meet the definition of a designated settlement fund under section 468B(d) of the Internal Revenue Code, or of a qualified settlement fund under section 1.468B-1 of the Income Tax Regulations?

—  
Printed Name of Taxpayer or Authorized Representative

—  
Signature of Taxpayer or Authorized Representative

Date

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