

**Internal Revenue Service**

Department of the Treasury  
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Date:  
November 21, 2017

LEGEND

Trust =

W =

X =

Y =

Z =

Date1 =

Date2 =

Date3 =

Date4 =

Date5 =

Date6 =

Date7 =

Date8 =

Date9 =

Date10 =

Dear :

This responds to a letter dated May 26, 2017, and subsequent correspondence, submitted on behalf of Trust, requesting a ruling under § 301.7701-4(d) of the Procedure and Administration Regulations.

## FACTS

The information submitted states that W and X (collectively, “Debtors”) each filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court on Date1. On Date2, Debtors submitted to the Bankruptcy Court the Seventh Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code (“Plan”) and a related disclosure statement (“Disclosure Statement”). On Date3, the Plan was confirmed by the Bankruptcy Court. On Date4 (“Effective Date”), the transactions contemplated by the Plan were consummated. Trust was formed pursuant to the Plan, and is governed by the Plan and the Trust Agreement dated Date5.

On the Effective Date, Trust was funded with all of the assets of Debtors other than: (1) cash to be distributed by Debtors, as reorganized, on and from the Effective Date, to holders of certain claims for costs or expenses of administration of the Chapter 11 case, certain claims entitled to priority under the Bankruptcy Code, certain claims for de minimis amounts, vendor claims with respect to services, software licenses or goods provided to or for the benefit of Y (W’s subsidiary) or Y’s subsidiaries, and claims by certain notes trustees for indemnification and reasonable fees and expenses, (ii) cash necessary to pay the fees and expenses owed to certain creditors’ professionals, (iii) cash necessary to reimburse Debtors for fees and expenses incurred in connection with initial distributions made by Debtors as disbursing agent, (iv) excess cash held by the disbursing agent after making disbursements in accordance with the Plan, and (v) equity interests in X (all assets of which were contributed to Trust), Y and Z. Trust represents that Trust has not, and will not, hold any operating assets of a going business, a partnership interest in a partnership that holds operating assets, or fifty percent or more of stock of a corporation with operating assets.

The initial term of Trust was for three years ending on Date6. On Date7, Trust filed a motion with the Bankruptcy Court requesting a three-year extension of the term of Trust on the basis that the extension was necessary to analyze and pursue or defend various causes of action (including claims for disputed tax refunds and potential actions

against certain former directors and officers of Debtors) and to investigate, prosecute and/or resolve outstanding disputed claims against Debtors. By order dated Date8, Bankruptcy Court granted the request and extended Trust's term until Date9.

Pursuant to the provisions of the Trust Agreement, Trust was created for the purpose of liquidating the assets of Trust, 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 Trust. The Plan provides that the beneficial interests in Trust would be distributed to certain holders of senior notes claims, subordinated notes claims, general unsecured claims, guarantees claims, preferred income equity redeemable securities claims, and holders of certain debt of Y. In addition, the Plan provides that, in the event such claims are fully paid, the interests in Trust would be redistributed to certain holders of subordinated claims, and after such subordinated claims are paid in full, certain holders of preferred equity interests, Dime Warrants, and common equity interests.

Pursuant to the provisions of the Trust Agreement, 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.

The Plan and Trust Agreement require all parties, including Debtors, Trust and Trust beneficiaries, to treat the transfer of Trust assets to Trust as (i) a transfer of Trust assets (subject to any obligations relating to those assets) directly to Trust beneficiaries and, to the extent Trust assets are allocable to disputed claims, to the reserve established to hold Trust assets allocable to, or retained on account of, disputed general unsecured claims ("Disputed Claims Reserve"), followed by (ii) the transfer by such beneficiaries to Trust of Trust assets (other than Trust assets allocable to the Disputed Claims Reserve) in exchange for Trust interests. Accordingly, the Plan, Disclosure Statement and Trust Agreement provide that Trust beneficiaries shall be treated for U.S. federal income tax purposes as the grantors and owners of their respective share of Trust assets (other than such Trust assets that are allocable to the Disputed Claims Reserve), consistent with the requirements set out in Rev. Proc. 94-45, 1994-2 C.B. 684. Trust represents that, in accordance with the Plan, the Disclosure Statement, and the Trust Agreement, Trust has filed, and will continue to file, returns for Trust treating it (but not the Disputed Claims Reserve) as a grantor trust pursuant to § 1.671-4(a) of the Income Tax Regulations.

Trust further represents that, from its establishment, Trust has been formed and operated consistent with the conditions set forth in Rev. Proc. 94-45. In addition, Trust elected to treat the Disputed Claims Reserve as a disputed ownership fund under § 1.468B-9 and has reported consistently in that regard.

Trust represents that the trustee and the trust advisory board have been working in an expeditious, commercially reasonable manner to monetize assets, to analyze and pursue any valid causes of action (including, without limitation, tax refund claims, preference actions, and potential causes of action against former directors and officers of W) and to investigate, prosecute and/or resolve disputed claims against Debtors. However, two principal outstanding matters have not concluded and are not expected to conclude by Date9, including the reconciliation of disputed claims filed against Debtors by former employees of Debtors and two claims pending in litigation with respect to federal and state income tax refunds. Accordingly, Trust represents that it is impossible for Trust to completely liquidate by Date9.

Under Article III of Trust Agreement, multiple extensions of Trust's term may be obtained so long as Bankruptcy Court approval is obtained on a date within the period six months prior to the expiration of each extended term, and the extension is necessary to facilitate or complete the recovery and liquidation of Trust assets.

## 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. 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 purposes the carrying on 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).

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

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. 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 will be classified for federal income tax purposes as a liquidating trust under § 301.7701-4(d). As such, since inception, Trust (exclusive of the Disputed Claims Reserve) has been a grantor trust for federal income tax purposes, of which the Trust beneficiaries are treated as the owners.

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 Date10 will not adversely affect the determination that Trust is a liquidating trust under § 301.7701-4(d).

Except as expressly set forth above, no opinion is expressed or implied 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 copies of this letter to your authorized representatives.

Sincerely,

James A. Quinn  
Senior Counsel, Branch 3  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2):

Copy of this letter

Copy for § 6110 purposes