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Department of the Treasury
Washington, DC 20224

Person To Contact:

Telephone Number:

Refer Reply To:
CC:PSI:B03
PLR-143957-13

Date:
October 28, 2014

X =

Trust =

Trust Agreement =

Date 1 =

Date 2 =

a =

b =

c =

d =

e =

Dear :

This letter responds to a letter dated October 14, 2013, and subsequent correspondence, submitted on behalf of X and Trust, requesting rulings on several issues arising from the establishment, funding, and potential termination of Trust under § 646 of the Internal Revenue Code and other provisions.

BACKGROUND

In 1971, the Alaska Native Claims Settlement Act of 1971 ("ANCSA"), 43 U.S.C. 1601 et seq., settled the Alaska natives' claims to land and resources. The ANCSA implements the settlement of native Alaskans' aboriginal land claims by providing for the conveyance of certain lands and money ("Alaska Native Fund", or "ANF") to Alaska Native Corporations ("ANCs") established by qualified Alaska natives as compensation.

The ANCSA provides that U.S. citizens with ¼ or more of Alaska Indian, Eskimo, or Aleut blood, who were living on December 18, 1971, were qualified to participate in the settlement. The natives who qualified to participate in the settlement were allowed to enroll as stockholders and receive stock ("Settlement Common Stock") in one of the twelve regional corporations and in one local village corporation created under the act to receive assets.

The ANCSA, as originally enacted, provided that for a period of 20 years after December 18, 1971, the stock, inchoate rights thereto, and any dividends paid or distributions made with respect thereto may not be sold, pledged, subjected to a lien or judgment execution, assigned in present or future, or otherwise alienated. This limitation, however, did not apply to transfers of stock pursuant to a court decree of separation, divorce, or child support; by a stockholder who is a member of a professional organization, association, or board that limits the ability of that stockholder to practice his profession because of holding such stock; or by inter vivos gift to certain family members. The ANCSA also provided that upon the death of any stockholder, ownership of such stock shall be transferred to any person in accordance with the last will and testament of the deceased or under the applicable laws of intestacy, except that during the 20-year period after December 18, 1971, such stock shall carry voting rights only if the holder thereof through inheritance is also an Alaska native.

Subsequent amendments to the ANCSA generally extend beyond December 18, 1981, the alienability restrictions on the Settlement Common Stock of an ANC unless and until the shareholders of the corporation decide to terminate them. 43 U.S.C. § 1629c. If the shareholders vote to terminate the alienation restrictions on the stock, all Settlement Common Stock is canceled as a matter of law and is replaced with unrestricted Replacement Common Stock. 43 U.S.C. § 1606(h)(3). Thereupon, the special character of the corporation as an ANC created under the ANCSA ceases and the corporation becomes a regular domestic corporation subject to regulation under securities laws.

To accommodate the desire of certain ANCs to transfer a portion of their assets out of the corporate form, the Alaska Native Claims Settlement Act Amendment of 1987 authorizes the conveyance of certain assets of an ANC to a state-chartered Settlement Trust. 43 U.S.C. § 1629e. The general purpose of a Settlement Trust is to preserve native heritage and culture and to promote the health, education, and economic welfare of its beneficiaries, the shareholders of the transferor ANC, and their lawful successors. The trust is to be used to insulate permanently land, as well as other assets transferred to it, from the business risks undertaken by the corporation. Such trusts may not operate as a business nor may they make a subsequent transfer of land or interests therein except for a reconveyance to the transferor corporation, if such reconveyance is authorized in the trust instrument. 43 U.S.C. § 1629e.

If the board of directors of an ANC adopts a resolution to establish a Settlement Trust, the resolution to establish the trust must be submitted to a vote of the corporation's shareholders for approval. 43 U.S.C. §§ 1629(a)(3) and 1629b(b). The shareholders, however, are not required to approve the conveyance of any assets by the corporation to the trust unless all or substantially all of the assets of the corporation are to be conveyed. 43 U.S.C. § 1629e(a)(1)(B).

Section 646 was enacted as part of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA). Section 646 addresses several aspects concerning the tax treatment of Alaska Native Settlement Trusts.

FACTS

The information submitted states that X was incorporated as an ANC pursuant to the ANCSA and Alaska state law. X has approximately a shareholders, predominantly of Alaskan Native descent. On Date 1, X's Board of Directors approved a plan to establish Trust. On Date 2, X's shareholders approved Trust as a Settlement Trust pursuant to the ANSCA and Alaska state law. In addition to a contribution of $c already made to Trust, upon receipt of this letter ruling, X's Board of Directors anticipate contributing approximately $d to Trust.

Under the ANCSA, the purpose of a Settlement Trust is to promote the health, education and welfare of its beneficiaries and preserve the heritage and culture of the Alaska Natives. Trust also provides periodic financial benefits to X's elders. Under the Trust Agreement, in addition to the contribution of $c and $d to Trust, the Trust Agreement provides that X is authorized to convey additional property to Trust in the future. Trust is irrevocable and may not be altered, amended, or terminated except as provided in the Trust Agreement and as required by the ANCSA. The Trust Agreement provides for termination if Trust experiences an event that has a materially adverse effect on Trust objectives, or Trust has no remaining beneficiaries.

Trust's beneficiaries will be those living individuals who are 65 years old or older and who were originally enrolled to X by virtue of the final Alaska Native Roll issued by the United States Secretary of the Interior as of 1979. The beneficiaries will not include any residuary or contingent beneficiary. Pursuant to the Trust Agreement, additional beneficiaries may be added upon written resolution of X's Board of Directors and a majority vote of each of X's Board of Directors and shareholders.

The Trust Agreement also provides that the trustees shall distribute $e quarterly to the each beneficiary. Each person who, as of the date selected by the trustees, meets the definition of beneficiary shall receive an equal share of Trust's distribution. Each beneficiary may, by delivering an executed and completed form, disclaim any right to a future distribution or set of future distributions from Trust. The disclaimer will extinguish all legal right of the beneficiary to the distributions disclaimed. A spendthrift provision in the agreement prohibits a beneficiary from selling, assigning, hypothecating or transferring any interest in Trust.

The Trust Agreement provides that there shall be b trustees. The trustees are employees of X holding specific positions. Trust's Board of Trustees will appoint successor trustees pursuant to the Trust Agreement in the event one of the specific positions is eliminated. However, if X is merged, dissolved, or consolidated, or if X's shareholders vote to terminate the alienation restrictions on the X Settlement Common Stock, but Trust does not terminate, each serving trustee shall be converted to a term appointment as trustee. At that time, each beneficiary will be notified of an impending vacancy and will be eligible to declare their candidacy. The candidates with the most votes shall be elected to the positions to be filled in order of the most votes received.

The trustees are prohibited from exercising any power primarily for the benefit of X or its affiliates, rather than for the benefit of Trust's beneficiaries. The trustees are also prohibited from operating a business within Trust.

The Trust Agreement provides that except as provided in 43 U.S.C. § 1629e(c), Trust assets are not subject to the claims of the creditors of X or to satisfy any liabilities of X.

X represents that: (1) any transfer to Trust will consist of less than substantially all of X's assets so that the shareholders will not be required to approve the conveyance of assets to Trust; (2) at the time of the transfer of any assets to Trust, the transfer will not render X unable to satisfy claims based upon 43 U.S.C.

§ 1629e(c)(1), (2), or (3), render X insolvent, or occur when X is insolvent; (3) after any transfer of assets to Trust, the assets retained by X will be more than adequate to meet its obligations; and (4) Trust will make the election under § 646(c) to have the provisions of § 646 apply to Trust.

X proposes to enter into service agreements with Trust for Trust's use of goods, services and facilities provided by X for Trust's administrative responsibilities. X may be paid a fee by Trust for such use. Any fee paid will constitute a reasonable amount and will be no more than a fee that would be charged by an unrelated third party.

LAW & DISCUSSION

Section 301.7701-4(a) of the Procedure and Administration Regulations provides that, in general, an arrangement will be treated as a trust under the Code if the purpose of the arrangement is to vest in trustees responsibility for the protection and conservation of property for beneficiaries who cannot share in the discharge of this responsibility and, therefore, are not associates in a joint enterprise for the conduct of business for profit.

Section 646(a) provides that if a § 646 election is in effect with respect to any Settlement Trust, the provisions of § 646 shall apply in determining the income tax treatment of the Settlement Trust and its beneficiaries with respect to the Settlement Trust. Accordingly, subpart E of part 1 of subchapter J of chapter 1 of the Code (the grantor trust provisions under §§ 671 through 679) will not govern the income tax treatment of Trust during any period that the § 646 election is in effect for Trust.

Section 301(a) provides, in general, that except as otherwise provided, a distribution of property (as defined by § 317(a)) made by a corporation to a shareholder with respect to its stock shall be treated in the manner provided in § 301(c). Under §§ 301(c) and 316, the distribution shall be taxable as a dividend to the extent of the earnings and profits of the distributing corporation.

Section 301(d) provides that the basis of property received in a distribution to which § 301(a) applies shall be the fair market value of such property.

Section 311(b)(1) provides that if a corporation distributes property (other than an obligation of the corporation) to a shareholder in a distribution to which subpart A applies, and the fair market value of the property exceeds its adjusted basis (in the hands of the distributing corporation), then gain shall be recognized to the distributing corporation as if such property were sold to the distributee at its fair market value.

Section 646(b)(1) provides that there is imposed on the taxable income of an electing Settlement Trust, other than its net capital gain, a tax at the lowest specified rate in § 1(c).

Section 646(b)(2) provides that in the case of an electing Settlement Trust with a net capital gain for the taxable year, a tax is imposed on such gain at a rate of tax that would apply to such gain if the taxpayer were subject to a tax on its other taxable income at only the lowest rate specified in § 1(c).

Section 646(d)(1) provides that in the case of an electing Settlement Trust, no amount shall be includible in the gross income of a beneficiary of such trust by reason of a contribution to the trust.

Section 646(d)(2) provides that the earnings and profits of the sponsoring Native Corporation shall not be reduced on account of any contribution to such Settlement Trust.

Section 646(g) provides that the taxable income of an electing Settlement Trust shall be determined under § 641(b) without regard to any deduction under §§ 651 or 661.

Section 1223(2) provides that, in determining the period for which the taxpayer has held property however acquired, there shall be included the period for which the property was held by any other person, if under chapter 1 of the Code such property has, for the purpose of determining gain or loss from a sale or exchange, the same basis in whole or in part in his hands as it would have in the hands of such other person.

CONCLUSIONS

Accordingly, based solely on the facts submitted and the representations made in this ruling request, and provided that <u>Trust</u> meets all the requirements to be a Settlement Trust, and makes an election under § 646(c) which remains in effect, we rule as follows:

1. <u>Trust</u> will be classified as a trust for federal tax purposes and is not an association or a partnership and is a separate entity for federal tax purposes. Section 301.7701-4(a).

2. The income tax treatment of <u>Trust</u> will be governed by § 646. Section 646(a).

3. No amount will be included in the gross income of X's shareholders or Trust's beneficiaries when X contributes property (including cash) to Trust. Section 646(d)(1).

4. X's contributions to Trust will not constitute gross income to Trust.

5. X's earnings and profits will not be reduced on account of any contribution by X to Trust. Section 646(d)(2).

6. X will not be allowed any deduction for any amounts contributed to Trust.

7. X will recognize gain on any property (including ANCSA land) contributed to Trust that has a fair market value in excess of its basis, in an amount equal to the excess of the property's fair market value over its adjusted basis for X. Section 311(b). The basis of such property in the hands of Trust will be equal to its fair market value on the day the property is contributed to Trust. Section 301(d).

8. Trust's holding period for the property contributed to Trust to which X must recognize gain under § 311(b) will begin on the day Trust receives the property. Cf. § 1223(2).

9. The service agreements will not affect the § 646 election of Trust nor cause the grantor trust rules to apply to Trust.

Except as specifically set forth above, we express or imply no opinion as to the federal tax consequences of the transaction described above under any other provisions of the Code. Furthermore, we express no opinion as to Trust's basis in property contributed by X to Trust where X does not have to recognize gain under § 311(b). We also express or imply no opinion as to whether the expenses incurred by Trust with respect to the service agreements are reasonable or represent fair value.

This ruling is directed only to the taxpayer who requested it. According to § 6110(k)(3), this ruling may not be used or cited as precedent. Pursuant to a power of attorney on file with this office, we are sending a copy of this letter to Trust and to X and Trust's authorized representative.

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 rulings requested, it is subject to verification on examination.

Sincerely,

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

Enclosures (2):

A copy of this letter
A copy for § 6110 purposes