

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:DOM:P&SI:2 - PLR-119363-98

Date:

February 9, 1999

Grantor =

Trust =

Trustee =

A =

B =

State =

Dear :

This is in response to your letter dated October 7, 1998, submitted on behalf of Grantor, requesting a ruling that proposed Trust will satisfy the requirements of a charitable remainder unitrust under § 664(d)(2) of the Internal Revenue Code.

Grantor proposes to establish Trust under the laws of State. Trust is intended to qualify as a charitable remainder unitrust under § 664(d)(2) of the Code. The governing instrument of Trust provides that the unitrust amount is payable in equal shares to A and B for a term of five years. If either A or B does not survive the term, the entire unitrust amount is payable to the survivor for the remainder of the term. If neither A nor B survives the term, then the entire unitrust amount is payable to the then-living grandchildren of Grantor for the remainder of the term. At the end of the term, the trustee shall distribute the entire principal and income of Trust in equal shares to two charitable organizations specified in the governing instrument of Trust. If one of the specified charitable organizations no longer exists or is no longer an organization described in §§ 170(c), 2055(a), and 2522(a) of the Code, then the entire principal and income shall be distributed to the remaining organization. If neither organization exists or qualifies as a tax-exempt organization under the above sections of the Code, then the trustee shall distribute the principal and income to one

or more qualified tax-exempt organizations as the trustee shall select in the trustee's sole discretion.

The unitrust amount will be an amount equal to 7 percent of the net fair market value of the trust assets (determined as of the first day of the taxable year of Trust). The trustee shall prorate the unitrust amount on a daily basis for a short taxable year and for the taxable year in which the unitrust term expires. The unitrust amount will be paid in equal quarterly installments from income and, to the extent that income is insufficient, from principal. Such quarterly installments will be paid at the end of each quarter, and the unitrust amount must be paid to the trust recipients no later than the close of the taxable year for which the payment is due. Any income of the trust for a taxable year in excess of the unitrust amount shall be added to principal.

Trustee shall act as initial trustee. A and B shall have authority to remove the trustee and appoint a successor by their mutual written consent. If either A or B fails to survive the unitrust term, the survivor shall have such authority. If neither A nor B survives the unitrust term, the then-living grandchildren of Grantor shall have such authority.

Pursuant to § 4.01(39) of Rev. Proc. 99-3, 1999-1 I.R.B. 111, the Internal Revenue Service has generally discontinued issuing rulings concerning whether a charitable remainder trust that provides for unitrust payments for one or two measuring lives satisfies the requirements described in § 664 of the Code.

In the present case, Trust provides unitrust payments for a term of years. Therefore, your request is not subject to § 4.01(39) of Rev. Proc. 99-3.

In lieu of seeking the Service's advance approval of a charitable remainder unitrust, taxpayers are directed to follow the sample provisions for charitable remainder unitrusts outlined in Rev. Proc. 90-30, 1990-1 C.B. 534. By following the models contained in Rev. Proc. 90-30, taxpayers can be assured that the Service will recognize the trust as meeting all the requirements of a qualified charitable remainder unitrust under § 664(d)(2) of the Code, provided that the trust operates in a manner consistent with the terms of the trust instrument and provided it is a valid trust under applicable local law. In addition, for transfers to a qualifying charitable remainder unitrust, the remainder interest will be deductible under §§ 170(f)(2)(A) and 2522(c)(2)(A) if the charitable beneficiary otherwise meets all of the requirements of those sections.

In the present case, Grantor has noted that Trust contains provisions which differ from the model language in Rev. Proc. 90-

30 in several ways. Therefore, we will issue a ruling on whether those provisions disqualify Trust under § 664 of the Code.

First, the provisions in the proposed Trust differ from the model language in that the unitrust amount is to be paid to the recipients for a term of years rather than for the lives of the recipients. Second, the provisions in the proposed Trust provide contingent beneficiary designations if one or both of the recipients should fail to survive the unitrust term. Third, the provisions in the proposed Trust differ from the model language in that they provide that the unitrust amount must be paid to the recipients no later than the close of the taxable year for which the payment was due. Fourth, the provisions in the proposed trust designate multiple and alternate charitable remaindermen and provides for the appointment of a successor trustee.

Section 664(d)(2) of the Code sets forth the requirements to be a charitable remainder unitrust. Section 664(d)(2)(A) provides that a fixed percentage (which is not less than 5 percent) of the net fair market value of the assets, valued annually, is to be paid, not less often than annually, to one or more persons (at least one of whom is not an organization described in § 170(c) and, in the case of individuals, only to an individual who is living at the time of the creation of the trust) for a term of years (not in excess of 20 years) or for the life or lives of such individual or individuals. No amount other than the above-described payments may be paid to or for the use of any person other than an organization described in § 170(c). Following the termination of the payments described above, the remainder interest in the trust is to be transferred to, or for the use of, an organization described in § 170(c).

Section 1.664-3(a)(1)(i)(a) of the Income Tax Regulations provides that, for taxable years ending after April 18, 1997, the governing instrument must provide that the trust shall pay not less often than annually a fixed percentage of the net fair market value of the trust assets determined annually to a person or persons described in § 1.664-3(a)(3) for each taxable year of the period specified in § 1.664-3(a)(5).

Section 1.664-3(a)(3)(i) of the regulations provides that permissible unitrust beneficiaries may include members of a named class except in the case of a class which includes any individual, all such individuals must be alive and ascertainable at the time of the creation of the trust unless the period for which the unitrust amount is to be paid to such class consists solely of a term of years.

Section 1.664-3(a)(5)(i) of the regulations provides that in the case of an amount payable for a term of years, the length of

the term of years shall be ascertainable with certainty at the time of the creation of the trust, except that the term may be terminated by the death of the recipient or by the grantor's exercise by will of a retained power to revoke or terminate the interest of any recipient other than an organization described in § 170(c). In any event, the period may not extend beyond either the life or lives of a named individual or individuals or a term of years not to exceed 20 years.

Section 1.664-3(a)(6)(iv) of the regulations provides that the governing instrument of a trust shall provide that if an organization to or for the use of which the trust corpus is to be transferred or for the use of which the trust corpus is to be retained is not an organization described in § 170(c) at the time any amount is to be irrevocably transferred to or for the use of such organization, such amount shall be transferred to or for the use of one or more alternative organizations which are described in § 170(c) at such time. Such alternative organization or organizations may be selected in any manner provided by the terms of the governing instrument.

Section 2 of Rev. Proc. 90-30 provides that if a taxpayer makes a transfer to a trust that substantially follows one of the sample forms of trust contained therein, the taxpayer may be assured that the Service will recognize the trust as meeting all the requirements of a charitable remainder unitrust, provided that the trust operates in a manner consistent with the terms of the instrument creating the trust and provided the trust is valid under local law.

Section 3 of Rev. Proc. 90-30 provides that if provisions of a trust are substantially similar to those of the sample trusts provided in the Revenue Procedure or in Rev. Proc. 89-20, 1989-1 C.B. 841, the Service will recognize the trust as satisfying all of the applicable requirements of § 664(d)(2) of the Code even though the wording is varied to comport with local law and practice as necessary to create trusts, define legal relationships, pass property by bequest, provide for the appointment of alternative and successor trustees, or designate alternative charitable remaindermen.

Section 5, paragraph 2 of Rev. Proc. 90-30 provides that upon the death of the first of the unitrust amount beneficiaries to die, the survivor shall be entitled to receive the entire unitrust amount.

Based solely on the information submitted, we conclude that upon the execution of Trust, the governing instrument will meet the requirements of a charitable remainder unitrust under § 664

of the Code, provided that Trust is a valid trust under applicable local law.

No opinion is expressed as to the federal tax consequences of the formation or operation of Trust under the provisions of any other section of the Code.

A copy of this letter should be attached to the first federal tax return that reflects this transaction. A copy is enclosed for that purpose.

This ruling is directed only to the taxpayer who requested it. § 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to Grantor.

Sincerely yours,

J. THOMAS HINES
Senior Technician Reviewer
Branch 2
Office of the Assistant
Chief Counsel
(Passthroughs and
Special Industries)

Enclosures: 2
Copy of this letter
Copy for § 6110 purposes