

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

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Date:

April 19, 2000

A =
B =
Trust =
State =
D1 =
D2 =
D3 =
\$x =

Dear :

This is in response to your letter, dated September 15, 1999, and subsequent correspondence, submitted on behalf of A and B, requesting a ruling that Trust will not be disqualified as a charitable remainder unitrust under section 664(d)(2) of the Internal Revenue Code.

The information submitted states that A and B as Grantors established Trust under the laws of State on D1. Trust was funded with publicly traded stock with a fair market value of \$x. Trust was intended to qualify as a charitable remainder unitrust under section 664(d)(2) of the Code.

Relevant provisions of the governing instrument of Trust are as follows:

Article II provides that Trust is irrevocable but can be amended for the sole purpose of ensuring that the Trust qualifies and continues to qualify as a charitable remainder unitrust.

Article III 1. provides that a unitrust amount is payable in equal shares to the Grantors for their joint lives and that the unitrust amount will be an amount equal to 8 percent of the net fair market value of the trust assets (determined as of the first

day of the taxable year of Trust by the trustee).

Article III 2. a. provides that at the end of the unitrust term, the entire principal and income of Trust shall be distributed to charitable organizations, as defined in sections 170(c), 170(b)(1)(A), 2055(a) and 2522(a).

Article IV provides that the trustee of Trust is authorized and empowered to invest and reinvest the Trust Fund in common or preferred shares of any corporation, legal or equitable interest in real estate, and any other property of any kind or description, free from any limitation then or thereafter imposed by law whether or not such assets be of the character authorized by law for trust investments.

An institution acted as the initial trustee of Trust. On D2 Grantors exercised their authority under the trust instrument to remove the trustee and appoint themselves as sole trustees. On D3 Grantors, as trustees, amended Article IV of Trust by adding Paragraph 16. a.

Article IV 16. a. provides that trustee is prohibited from accepting, investing in or holding any assets such as real estate, stock in a closely held corporation or any other assets which do not have an objectively ascertainable market value and would result in disallowance of the charitable deduction.

Pursuant to section 4.01(39) of Rev. Proc. 2000-3, 2000-1 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 section 664 of the Code.

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 section 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 sections 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, Grantors are the sole trustees of Trust and hence Trust contains a provision which is not specifically addressed by the model language in Rev. Proc. 90-30. Therefore, we will issue a ruling on whether this provision disqualifies Trust under section 664 of the Code.

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 section 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 section 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 section 170(c).

Section 1.664-1(a)(7)(i) of the Income Tax Regulations provides that, if unmarketable assets are transferred to or held by a trust, the trust will not be a trust with respect to which a deduction is available under section 170, 2055, 2106, or 2522, or will be treated as failing to function exclusively as a charitable remainder trust unless, whenever the trust is required to value such assets, the valuation is (a) performed exclusively by an independent trustee; or (b) determined by a "current qualified appraisal", as defined in § 1.170A-13(c)(3), from a "qualified" appraiser, as defined in § 1.170A-13(c)(5).

Section 1.664-1(a)(7)(ii) of the regulations provides that unmarketable assets are assets that are not cash, cash equivalents, or other assets that can be readily sold or exchanged for cash or cash equivalents. For example, unmarketable assets include real property, closely-held stock, and an unregistered security for which there is no available exemption permitting public sale.

We conclude that the fact that the Grantors are the sole trustees of Trust does not disqualify the Trust as a charitable remainder unitrust under section 664 of the Code and the applicable regulations where Trust may only accept, invest in and hold assets with an objectively ascertainable market value.

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.

This ruling is directed only to the taxpayers who requested it. Section 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 the Grantors.

Sincerely yours,
J.THOMAS HINES
Acting Branch Chief Branch 2
Office of the Assistant Chief Counsel
(Passthroughs and Special Industries)

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