

**Internal Revenue Service**

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:2 - PLR-118578-99

Date:

September 28, 2000

H =

W =

Trust =

X =

D1 =

D2 =

D3 =

Year 1 =

Year 2 =

\$x =

\$y =

State =

Cite =

Dear :

This is in response to your letter, dated November 17, 1999, and subsequent correspondence, submitted on behalf of Trust, requesting a ruling that a contribution of X stock be ignored for federal tax purposes and not disqualify Trust as a charitable remainder unitrust under 664(d)(2) of the Code.

H and W established Trust under the laws of State on D1. At that time, H and W contributed shares of X, having an aggregate value of \$x, to Trust. H and W are the trustees and income

beneficiaries of Trust. Trust was intended to qualify as a charitable remainder unitrust under § 664(d)(2) of the Code.

On D2 of Year 1, H and W made an additional contribution of shares of X to Trust. The X stock of the second contribution was sold by Trust on D3 of Year 1 for \$y. Article Sixth of Trust's governing instrument provides that no additional contributions shall be made to Trust after the initial contribution. Soon after the second contribution was made, H and W realized that the second contribution was not permitted under Article Sixth. After this discovery, the custodian of Trust, at the instruction of H and W, identified and maintained records of the proceeds of the second contribution. No charitable deduction was taken by H and W relating to the second contribution, and the proceeds of the second contribution was not used when calculating any unitrust payments of Trust.

H and W, as trustees, propose to return the proceeds of the second contribution to themselves as the grantors. H and W represent that they will amend their individual tax returns for the Year 1 and Year 2 taxable years. H and W will report any capital gains and dividend income generated by the second contribution of X stock while it was in Trust's account.

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 nor more than 50 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 664(d)(2)(D) provides that the value (determined under § 7520) of such remainder interest must be at least ten percent of the initial net fair market value of all property placed in the trust.

Under the laws of State, a fiduciary may accept additional contributions to a trust unless a prohibition against additional contributions is contained in the trust instrument. Cite. The governing instrument of Trust has a specific provision against additional contributions and overrides any statutory authority of H and W, as trustees, to accept the additional contribution. As

H and W, as trustees, acted without legal authority, the acceptance of the second contribution should be viewed as a legal nullity and the second contribution be treated as if never been made.

Based solely on the information submitted, we conclude that the second contribution of X stock will be ignored for federal tax purposes and will not disqualify the Trust as a charitable remainder unitrust under 664(d)(2) of the Code, provided that H and W amend their Year 1 and Year 2 taxable years tax returns to report any capital gains and dividend income generated by the second contribution of X stock while it was in the Trust's account.

No opinion is expressed as to the federal tax consequences of the 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. 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 Trust.

Sincerely yours,

J. THOMAS HINES  
Acting Branch Chief  
Branch 2  
Office of the Associate  
Chief Counsel  
(Passthroughs and  
Special Industries)

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