

Internal Revenue Service

Department of the Treasury

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Person to Contact:

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Refer Reply To:
CC:PSI:3 PLR-107025-00
Date:
March 14, 2001

LEGEND:

Trust =

G =

I =

A =

B =

C =

D =

D1 =

Dear

This letter responds to a letter dated March 21, 2000, and subsequent correspondence written on behalf of Trust, that a proposed transfer of Trust's principal to certain charitable organizations will not affect Trust's assumed qualification as a charitable remainder unitrust under § 664 of the Internal Revenue Code and the applicable regulations.

FACTS

According to the information submitted, G created what is represented to be a charitable remainder unitrust (Trust) on D1. Trust's governing instrument requires I, an independent third-party trustee, to pay to G each year during his lifetime a unitrust amount equal to seven percent of the net fair market value of the trust's assets, valued as of the first day of each taxable year of the trust.

Article I, section (B) of Trust's governing instrument provides that, upon G's death, T will pay a prorated unitrust amount to G's estate, and will then distribute the trust principal and any accrued or undistributed income in equal shares to Trust's charitable remainder beneficiaries, A, B, C, and D.

Article I, section (C) of Trust's governing instrument provides that during G's lifetime, G shall have the power to assign any portion or all of the principal of the trust to any one or more of the charitable organizations referred to in Article I, section (B) prior to G's death, provided such organization is a qualified charitable organization at the time distributions of principal are made to it.

G wishes to terminate Trust by assigning Trust's principal to three of the four named charitable remainder beneficiaries. Accordingly, under the right retained by G in Article I, section (C) of Trust's governing instrument, G plans to assign 50 percent of X's principal to A, 25 percent to B, and 25 percent to C.

Trust requests a ruling that G's assignment of Trust's principal to A, B, and C will not jeopardize the status of Trust as a charitable remainder unitrust under § 664.

LAW

Section 664(d)(2) provides that a charitable remainder unitrust is a trust (A) from which a fixed percentage (which is not less than five percent) of the net fair market of its assets, valued annually, is to be paid, not less often than annually, to one or more persons (at least one of which 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, (B) from which no amount other than the payments described in subparagraph (A) may be paid to or for the use of any person other than an organization described in § 170(c), and (C) following the termination of the payments described in subparagraph (A), the remainder interest in the trust is to be transferred to, or for the use of, an organization described in § 170(c) or is to be retained by the trust for such use.

Section 1.664-1(a)(1)(iii)(a) of the Income Tax Regulations provides that the term "charitable remainder trust" means a trust with respect to which a deduction is allowable under §§ 170, 2055, 2106, or 2522 and which meets the description of a charitable remainder annuity trust (as described in § 1.664-2) or a charitable remainder unitrust (as described in § 1.664-3).

Section 1.664-3(a)(3)(ii) provides that a trust is not a charitable remainder unitrust if any person has the power to alter the amount paid to any named person other than an organization described in § 170(c) if such power would cause any person to be treated as the owner of the trust, or any portion thereof, if subpart E, part 1,

subchapter J, chapter 1, subtitle A of the Code were applicable to such trust.

Section 1.664-3(a)(4) provides that no amount other than the unitrust amount may be paid to or for the use of any person other than an organization described in § 170(c). The governing instrument may provide that any amount other than the unitrust amount shall be paid (or may be paid in the discretion of the trustee) to an organization described in § 170(c) provided that, in the case of distributions in kind, the adjusted basis of the property distributed is fairly representative of the adjusted basis of the property available for payment on the date of payment. For example, the governing instrument may provide that a portion of the trust assets may be distributed currently, or upon the death of one or more recipients, to an organization described in § 170(c).

CONCLUSION

Applying the relevant law to the facts submitted and the representations made, we conclude that G's proposed assignment of Trust's principal to A, B, and C will not adversely affect Trust's qualification as a charitable remainder unitrust under § 664 provided that A, B, and C are organizations described in § 170(c).

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, no opinion is expressed concerning whether Trust qualifies as a charitable remainder unitrust under § 664 or whether A, B or C is an organization described in § 170(c).

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

Under a power of attorney on file with this office, we are sending a copy of this letter to Trust.

Sincerely yours,
Mary Beth Collins
Assistant to the Chief, Branch 3
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes