

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:2 - PLR-138275-01
Date:
January 14, 2002

Trust =

A =

B =

C =

D =

E =

D1 =

D2 =

D3 =

D4 =

X =

Court =

State =

Dear :

This letter responds to your letter dated June 13, 2001, and subsequent

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correspondence, submitted by you as the authorized representative of Trust, requesting a ruling under § 664 of the Internal Revenue Code concerning the effect of the reformation of Trust.

The information submitted states that Trust was established on D1. Trust is an irrevocable trust intended to qualify as a charitable remainder unitrust (CRUT) under § 664. Trust provides for quarterly unitrust payments to the donors of Trust, A and B, during their lives and, after their deaths, to the survivor beneficiaries, C, D, and E, for their lives, of an amount equal to the lesser of (a) the trust income for the taxable year and (b) x% of the net fair market value of the trust assets, valued annually. In addition, if the trust net income for any taxable year exceeds the unitrust amount, the annual payment will include such excess net income to the extent the aggregate amounts paid to the beneficiaries in prior years is less than x% of the aggregate net fair market value of the trust assets for such years. Upon the deaths of the last of the survivor beneficiaries, Trust will terminate and the entire principal balance will be paid to the charitable remainder beneficiaries, free of trust.

The trustee of Trust proposes to reform Trust so that, beginning with the taxable year following the “triggering event” date, which is D3, the unitrust amount shall be an amount equal to x% of the net fair market value of the trust assets, with no “net income makeup” provision. On D2, the trustee filed a petition to reform Trust in Court. On D4, with the consent of the attorney general of State, Court granted permission for the reformation of Trust.

When A and B created Trust on D1, § 664(d)(2)(D) had not yet been added to the Code by § 1089(b)(2) of the Taxpayer Relief Act of 1997, Pub. L. No. 105-34. Trust would not have satisfied the requirements of § 664(d)(2)(D) on D1. As modified by the Court order of D4, Trust does not satisfy the requirements of § 664(d)(2)(D). The trustee of Trust requests a ruling that the reformation of Trust will not cause Trust to fail to qualify as a CRUT under § 664.

Section 664(d)(2)(A) provides that a CRUT is a trust from which a fixed percentage (which is not less than 5 percent nor more than 50 percent) of the net fair market value 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.

Section 664(d)(2)(B) provides that a CRUT may pay no amount other than the payments described in § 664(d)(2)(A) and other than qualified gratuitous transfers described in § 664(d)(2)(C) to or for the use of any person other than an organization described in § 170(c).

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Section 664(d)(2)(C) provides, in part, that following the termination of the payments described in § 664(d)(2)(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 a use.

Section 664(d)(2)(D) provides that with respect to each contribution of property to a CRUT, the value (determined under § 7520) of the remainder interest in such property must be at least 10 percent of the net fair market value of such property as of the date such property is contributed to the trust.

Section 664(d)(3) provides that notwithstanding the provisions of §§ 664(d)(2)(A) and (B), the trust instrument may provide that the trustee shall pay the income beneficiary for any year (A) the amount of the trust income, if such amount is less than the amount required to be distributed under § 664(d)(2)(A), and (B) any amount of trust income which is in excess of the amount required to be distributed under § 664(d)(2)(A), to the extent that (by reason of § 664(d)(3)(A)) the aggregate of the amounts paid in prior years was less than the aggregate of such required amounts.

Section 1.664-3(a)(1)(i)(f)(3) of the Income Tax Regulations provides that, notwithstanding § 1.664-3(a)(1)(i)(f)(2), if a trust either provides for payment of the unitrust amount under a combination of methods that is not permitted under § 1.664-3(a)(1)(i)(c), or provides for payment of the unitrust amount under only the method prescribed in § 1.664-3(a)(1)(i)(b), then the trust may be reformed to allow for a combination of methods permitted under § 1.664-3(a)(1)(i)(c) without causing the trust to fail to function exclusively as a charitable remainder unitrust under § 1.664-1(a)(4) or to engage in an act of self-dealing under § 4941 if the trustee begins legal proceedings to reform by June 8, 1999. The triggering event under the reformed governing instrument may not occur in a year prior to the year in which the court issues the order reforming the trust, except for situations in which the governing instrument prior to reformation already provided for payment of the unitrust amount under a combination of methods that is not permitted under § 1.664-3(a)(1)(i)(c) and the triggering event occurred prior to the reformation.

Notice 99-31, 1999-1 C.B. 1185, provides, in part, that the deadline for special reformations under § 1.664-3(a)(1)(i)(f)(3) is extended from June 8, 1999, until June 30, 2000.

Because the reformation of Trust met the requirements of § 1.664-3(a)(1)(i)(f)(3) and Notice 99-31, we conclude that the reformation of Trust will not cause Trust to fail to qualify as a CRUT under § 664. No opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, we express no opinion as to whether Trust was or is a CRUT under § 664.

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This ruling is directed only to the taxpayers who requested it. Section 6110(k)(3) 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 trustee of Trust.

Sincerely yours,

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

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