



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

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Contact Person:

UIL No.
513.01-00

Identification Number:

Telephone Number:

Employer identification Number:

Legend:

CRT =

LLC =

A =

Foreign Corporation =

B =

C =

Dear _____ :

This is in response to your request for a ruling regarding the proposed transaction described below:

CRT is a charitable remainder trust. It intends to make investments in stocks, securities, and other financial instruments by purchasing a limited partnership interest in LLC, which is organized under the laws of the State of A and classified as a partnership for U.S. federal income tax purposes.

LLC trades in stock, securities, and other financial instruments by investing substantially all of its assets in Foreign Corporation, a corporation that is organized in B. Foreign Corporation trades in stock, securities, and other financial instruments by investing substantially all of its assets in C, a partnership organized in B. C's principal business is trading in stock, securities, and other financial instruments for its own account directly or indirectly through U.S. and non-U.S. partnerships and other investment vehicles.

Foreign Corporation is governed by the laws of B. It is treated as a non-U.S. corporation for U.S. federal income tax purposes. All corporate formalities with respect to Foreign Corporation will be followed, the status of Foreign Corporation and its assets as separate from CRT and its assets will be observed, and Foreign Corporation will not act as an agent for CRT, LLC, or their trustees or partners. Neither CRT nor LLC will incur debt in order to invest in Foreign Corporation.

Foreign Corporation and C were organized to provide a vehicle for investors to participate in the returns of various unregistered, privately offered investment companies. As part of its investment activities, C will borrow funds and purchase securities on margin. Neither C nor

Foreign Corporation will engage in any insurance activities or derive any insurance-related income.

Until the number of non-U.S. investors increases, for U.S. federal income tax purposes Foreign Corporation will be classified as a "controlled foreign corporation" within the meaning of section 957 of the Internal Revenue Code.

Based on these representations, you have asked us to rule as follows:

1. CRT will not realize unrelated business taxable income ("UBTI") (within the meaning of section 512 of the Code) as a result of being a limited partner in LLC and receiving allocations of income, gain, loss, deduction, and credit, and distributions, related to LLC's investment in Foreign Corporation.
2. Amounts distributed by Foreign Corporation to LLC will not constitute UBTI to CRT.
3. Amounts of Subpart F income derived by CRT from its direct ownership of Foreign Corporation will not constitute UBTI to CRT.

LAW:

Section 664(c) of the Code provides that a charitable remainder trust is exempt from income tax for any taxable year unless the trust has UBTI for such year. If the trust has UBTI for any taxable year, then the trust is not exempt from taxes, and is subject to taxation under section 512.

Section 512(a)(1) of the Code defines UBTI as the gross income derived from an unrelated trade or business regularly carried on, less allowable deductions, and subject to certain modifications.

Section 512(b)(1) of the Code provides that dividends received or accrued shall be excluded from UBTI.

Section 512(b)(4) of the Code provides that notwithstanding the general exclusion of dividends from UBTI, dividends and other passive investment income derived from certain debt-financed property (and corresponding deductions) are included, as an item of gross income derived from an unrelated trade or business, in an amount ascertained under section 514.

Section 514(b) of the Code provides that the term "debt-financed property" means any property which is held to produce income and with respect to which there is acquisition indebtedness at any time during the taxable year.

Section 512(c) of the Code provides that if a trade or business regularly carried on by a partnership of which an organization is a member is an unrelated trade or business with respect to such organization, such organization in computing its UBTI shall include its share (whether or not distributed) of the gross income of the partnership from such unrelated trade or business and its share of the partnership deductions directly connected with such gross income.

Section 512(b)(17) of the Code provides that any amount included in gross income under

section 951(a)(1)(A) shall be included as an item of gross income derived from an unrelated trade or business to the extent that the amount so included is attributable to insurance income as defined in section 953.

Section 953 of the Code defines "insurance income," in part, as income which is attributable to the issuing of an insurance or annuity contract.

Sections 951 through 964 of the Code comprise Subpart F - Controlled Foreign Corporations. Section 951(a)(1)(A) provides that a United States shareholder of a controlled foreign corporation must include in gross income his pro rata share of the controlled foreign corporation's Subpart F income for the year, even if not distributed. Section 954(c)(1) of the Code provides that Subpart F income includes investment income.

ANALYSIS

Dividends received by a tax exempt organization are normally excluded from UBTI under section 512(b)(1) of the Code.

Notwithstanding the general exclusion of dividends from UBTI, amounts received by a tax exempt member of a partnership that are attributable to insurance income, as defined in section 953 of the Code, are considered UBTI to the tax exempt member under section 512(b)(17).

Foreign Corporation is organized independently from CRT and LLC and will follow all corporate formalities. Foreign Corporation will pay dividends to LLC, in which CRT has a partnership interest. The income CRT receives from Foreign Corporation through LLC will not be insurance-related, as Foreign Corporation will not engage in any insurance activities as defined in section 953 of the Code nor derive any insurance-related income. Therefore, the income CRT receives from Foreign Corporation will not constitute UBTI under section 512(b)(17), but rather dividend income under section 512(b)(1).

Notwithstanding the general exclusion of dividends from UBTI, amounts received by a partnership from certain debt-financed property are considered UBTI to a tax exempt member of the partnership, in proportion to that member's share of the gross income from the partnership, under sections 512(b)(4), 512(c), and 514 of the Code.

LLC will not incur indebtedness to make an investment in Foreign Corporation, and CRT will not borrow or incur indebtedness to acquire a partnership interest in LLC. Thus, any allocations to CRT of income, gain, loss, deduction, and credit, and distributions, related to LLC's investment in Foreign Corporation, will not constitute debt-financed income as described in section 514 of the Code, or result in UBTI to CRT.

Because the amounts of Subpart F income LLC and CRT will be deemed to receive from Foreign Corporation under section 951(a)(1)(A) of the Code will neither be debt-financed (as described in section 512(b)(4)) nor insurance-related (as described in section 512(b)(17)), such Subpart F income will not constitute UBTI to CRT.

Based on the information submitted, we rule as follows:

1. CRT will not realize UBTI (within the meaning of section 512 of the Code) as a result of being a limited partner in LLC and receiving allocations of income, gain, loss, deduction, and credit, and distributions, related to LLC's investment in Foreign Corporation.
2. Amounts distributed by Foreign Corporation to LLC will not constitute UBTI to CRT.
3. Amounts of Subpart F income derived by CRT from its direct ownership of Foreign Corporation will not constitute UBTI to CRT.

This ruling will be made available for public inspection under section 6110 of the Code after certain deletions of identifying information are made. For details, see enclosed Notice 437, *Notice of Intention to Disclose*. A copy of this ruling with deletions that we intend to make available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

This ruling is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Steven Godnitzky
Acting Manager, Exempt Organizations
Technical Group 1

Enclosure: Notice 437