

**Internal Revenue Service**

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Date:

July 06, 2004

Trust =

A =

B =

Charity 1 =

Charity 2 =

Charity 3 =

D1 =

D2 =

Court =

State =

Dear :

This letter responds to a letter dated August 12, 2003 and subsequent information submitted by Trust's authorized representative on behalf of Charity 1, the trustee of Trust, and Trust, requesting a ruling concerning the effect of a judicial

reformation of Trust on the qualification of Trust as a charitable remainder unitrust (CRUT) under § 664.

The information submitted states that on D1, A created and funded Trust with the intention that Trust qualify as a CRUT under § 664(d)(2). A established Trust with the assistance of B and A's attorney.

B is the director of estate planning at Charity 1. B educates and informs potential donors about gift opportunities to Charity 1. B informed A that A could create a CRUT and name Charity 1 and other charities as beneficiaries of the CRUT. B also informed A that A could retain the power to change the charities named as beneficiaries of the CRUT and the percentages that the charitable beneficiaries would receive. A informed B that A wished to create a CRUT with Charity 1 and other charities named as the remainder beneficiaries and that A also wished to retain the power to change the charitable beneficiaries and the percentages that the charitable beneficiaries would receive. B provided a sample form document to A's attorney to assist A's attorney in drafting the CRUT agreement. Through an error and oversight in B's office, the sample form provided to A's attorney did not include the provisions desired by A that would permit A to change the charitable beneficiaries and their respective percentage interests in the CRUT.

A's attorney used the sample form document provided by B's office to create the trust agreement that was executed by A on D1. Paragraph C, the Schedule of Charitable Distribution, of the trust agreement specifically named Charity 1, Charity 2, and Charity 3 as charitable beneficiaries. Paragraph E(12) of the trust agreement provided that no amount other than a Unitrust Amount shall be paid to or for the use of any person other than an organization described in §§ 170(b)(1)(A), 170(c), 2055(a), and 2522(a) (qualified exempt organizations). Because the attorney used the sample form provided by B's office, the trust agreement did not include provisions permitting A to change the charitable beneficiaries or their respective percentages.

The error in the trust document was not noticed until many years later when A informed Charity 1 that A wished to change the beneficiaries of Trust and their percentage interests in Trust. Because of the error, and because Trust is irrevocable, Trustee sought an order from the Court of State to correct Trust's governing document. State law permits reformation of trusts, upon the approval of the court, to correct mistakes and accord with the creator's intent.

On D2, Court issued an order, that due to the scrivener's error, Paragraph E(12) of the trust agreement would be reformed, ab initio to additionally provide that A retains the right by written instrument to add qualified charities and remove charities from the Schedule of Charitable Distribution as well as to change the percentage allocation to all charities provided that Charity 1 remains a 50% remainderman.

Section 664(d)(2) provides that for purposes of section 664, a charitable remainder unitrust is a trust (A) for which a fixed percentage (which is not less than 5 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 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, (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 section 170(c), and (C) following 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 section 170(c) or is to be retained by the trust for such a use.

Section 1.664-3(a)(4) of the Income Tax Regulations provides that the trust may not be subject to a power to invade, alter, amend, or revoke for the beneficial use of a person other than an organization described in section 170(c).

Based solely on the representations submitted, we conclude that the judicial reformation of Trust, ab initio, does not violate § 664. Furthermore, assuming that the terms of the reformed Trust are otherwise valid under § 664, the reformed Trust will be treated as a valid CRUT under 664(d)(1), ab initio.

Except as specifically set forth above, no opinion is expressed as to the federal tax consequences of the above described facts under any other provision of the Code. Specifically, no opinion is expressed concerning whether Trust is or was a charitable remainder annuity trust within the meaning of § 664(d)(1).

This ruling is directed only to the taxpayer on whose behalf it was requested. 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 Trust's authorized representative.

Sincerely,

Carolyn Hinchman Gray  
Senior Counsel, Branch 2  
Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy for § 6110 purposes