

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **200831002**
Release Date: 8/1/2008

Third Party Communication: None
Date of Communication: Not Applicable
Person To Contact:

Index Number: 664.03-02

, ID No.
Telephone Number:

Refer Reply To:
CC:PSI:B01
PLR-100818-08
Date:
May 01, 2008

LEGEND

Trust =

Trustee =

A =

D1 =

D2 =

State =

n =

Court =

Dear :

This letter responds to a letter dated December 21, 2007, and subsequent correspondence, submitted on behalf of Trustee, requesting a ruling that the reformation of Trust, as described below, will not cause Trust to fail to meet the requirements of § 664(d)(2) of the Internal Revenue Code.

FACTS

The information submitted states that A created Trust on D1 under the laws of State. A created Trust with the intention that Trust qualify as a charitable remainder unitrust (CRUT) under § 664(d)(2). Trustee is the trustee and charitable remainder beneficiary of Trust. Trustee and A represent that A's intention upon establishing Trust was that the term of Trust would extend until the later of (i) the date of death of the survivor of A and A's spouse; or (ii) the earlier of the 20th anniversary of D1 or the date of death of the last surviving child of A, with payments during that term being made to A, then to A's spouse if surviving, then to A's issue by right of representation. The original Trust agreement provides that the unitrust amount is payable to A until A's death, and thereafter, to A's spouse until the death of A's spouse.

A and Trustee arranged the terms of Trust in a series of telephone conversations. A was assisted by certain family members, but no professional tax advisor assisted A with the creation of Trust. Trustee and A represent that several months after signing the Trust agreement, but within the same taxable year of the donation, they discovered that Trust did not accurately express A's intent as to the term of the payments and the ability of A's children to receive payments after the death of A and A's spouse.

Because of the error, and because Trust is irrevocable, Trustee sought an order from Court authorizing a reformation ab initio of Trust. No parties objected to the proposed reformation. On D2, Court issued a judgment approving the reformation of Trust, ab initio, to reflect A's intention as described above. The reformed Trust agreement provides that the term of Trust extends until the later of (i) the date of death of the survivor of A and A's spouse; or (ii) the earlier of the 20th anniversary of D1 or the date of death of the last surviving child of A. The reformed Trust agreement further provides that payments during Trust's term will be made to A, then to A's spouse if surviving, then to A's issue by right of representation. The judgment states that Court finds by clear and convincing evidence that, due to mistakes in the expression of A's intent, Trust failed to accurately implement A's intent. The judgment is contingent on receipt of a favorable private letter ruling from the Internal Revenue Service. State law permits the reformation of a trust to conform to the settlor's intent.

Trustee and A represent that they have not filed any income tax returns or other documents, taken any other action or received any payments inconsistent with Trust, including the proposed changes. A, A's spouse, Trustee, and the attorney general of State all consent to the reformation of Trust.

LAW AND ANALYSIS

Section 664(d)(2) provides that for purposes of § 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 § 170(c) and, in the case if 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 § 664(d)(2)(A) may be paid to or for the use of any person other than an organization described in § 170(c), (C) following 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, and (D) with respect to each contribution of property to the trust, the value (determined under § 7520) of such remainder interest in such property is 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 1.664-3(a)(3)(ii) of the Income Tax Regulations provides that a trust is not a charitable remainder unitrust if any person has the power to alter the amount to be 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 a charitable remainder unitrust 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 § 170(c).

CONCLUSION

Based solely on the information submitted and the representations made, we conclude that the judicial reformation of Trust, ab initio, does not violate § 664. Accordingly, we conclude that the judicial reformation, ab initio, of Trust does not adversely affect Trust's qualification as a charitable remainder unitrust under § 664(d)(2).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, no opinion is expressed concerning whether Trust is or was a charitable remainder unitrust within the meaning of § 664(d)(2).

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

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to Trust's authorized representative.

Sincerely,

Audrey Ellis

Audrey Ellis
Senior Counsel, Branch 1
(Passthroughs & Special Industries)

Enclosure (1)
Copy of letter for § 6110 purposes

cc: