

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B01
PLR-136494-13
Date:
February 28, 2014

Legend:

A =

B =

C =

D =

Trust =

Charity =

Date 1 =

Date 2 =

x =

State =

Court =

Dear :

This is in response to your letter dated August 13, 2013, in which you requested rulings on behalf of Trust under §§ 664 and 4941 of the Internal Revenue Code.

Facts

Trust is an irrevocable trust created on Date 1, and intended to qualify as a charitable remainder unitrust under § 664. The settlors and initial trustees were A and B, husband and wife. Trust provides for annual distributions to the settlors and their two children, C and D, for each of their lifetimes. At the end of the last remaining lifetime the remaining Trust assets are to be distributed to Charity, which is classified as an organization described in § 501(c)(3) and a public charity. A and B have since died, leaving C and D as the trustees and sole remaining annuity beneficiaries. You have represented that neither Trust nor the settlors took deductions under §§ 170(f)(2)(B), 2055(e)(2)(B), or 2522(e)(2)(B) for payments to the income beneficiaries.

A and B intended to create an x percent standard charitable remainder unitrust (CRUT). A and B's attorney, however, used a form that created a net income charitable remainder unitrust (NICRUT). As such, the original language of Trust provided for an annual payout of the lesser of the net income of Trust for the taxable year or x percent of the fair market value of its assets, determined as of the first day of the taxable year.

The trustees assert that it was not the intent of A and B to have an income limitation on the payouts of Trust. Trust has always been administered as an x percent standard CRUT; the annual payout from Trust has been at all times x percent of the value of the assets, despite Trust income of less than x percent of the assets.

Trust filed a petition in Court in State seeking authority to reform Trust. On Date 3, Court issued an order correcting and reforming Trust *ab initio* from a NICRUT to a standard x percent CRUT to correct the scrivener's error.

Law and Analysis

Section 664(d)(2) provides that for purposes of § 664, a charitable remainder unitrust is a trust (A) 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, (B) from

which no amount other than the payments described in § 664(d)(2)(A) and other than qualified gratuitous transfers described in § 664(d)(2)(C) may be paid to or for the use of any person other than an organization described in § 170(c), (C) 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, 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 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 the trust income which is in excess of the trust 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 1.664-1(a)(4) of the Income Tax Regulations provides that for a trust to be a charitable remainder trust, it must satisfy the definition of and function exclusively as a charitable remainder trust from the creation of the trust. Solely for purposes of § 664 and the regulations thereunder, the trust will be deemed to be created at the earliest time that neither the grantor nor any other person is treated as the owner of the entire trust under subpart E, part 1, subchapter J, chapter 1, subtitle A of the Code (relating to grantors and others treated as substantial owners), but in no event prior to the time property is first transferred to the trust. For purposes of the preceding sentence, neither the grantor nor the grantor's spouse is treated as the owner of the trust under subpart E merely because the grantor or the grantor's spouse is named as a recipient of the annuity or unitrust amount.

Section 1.664-3(a)(4) provides, in part, that a charitable remainder 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 § 170(c).

Section 170(c)(2)(B) defines charitable purposes with respect to charitable contributions that are deductible.

Section 507(d)(2) provides that a substantial contributor means any person who contributed or bequeathed an aggregate amount of more than \$5,000 to the private foundation, if such amount is more than two percent of the total contributions and bequests received by the foundation.

Section 4941(a)(1) imposes an excise tax on each act of self-dealing between a disqualified person and a private foundation.

Section 4941(a)(2) generally imposes a tax on the participation of a foundation manager in an act of self-dealing knowing that it is such an act, payable by the foundation manager.

Section 4941(d)(1)(E) defines self-dealing as any direct or indirect transfer to, or use by or for the benefit of, a disqualified person of the income or assets of the private foundation.

Section 4946(a)(1) provides that a “disqualified person,” with respect to a private foundation, includes a substantial contributor, as defined under section 507(d)(2); a foundation director, trustee, or officer; and any spouse, ancestor, child, grandchild, great grandchild, and any spouse of a child, grandchild, or great grandchild of that contributor, director, or officer.

Section 4947(a)(2) applies § 4941 self-dealing rules, § 4945 taxable expenditure rules, and § 508(e) governing instrument rules, to the extent applicable to split-interest trusts, to § 642(c)(5) pooled income funds as if they were private foundations, where such funds are not exempt from tax under § 501(a), not all of the unexpired interests in which are devoted to one or more of the purposes described in § 170(c)(2)(B), and have amounts in trust for which a deduction was allowed under § 642(c)(5).

Section 4947(a)(2)(A) removes that application of the above code section for any amounts paid to income beneficiaries where no deduction is taken under §§ 170(f)(2), 2055(e)(2)(B), or 2522(c)(2)(B).

Treas. Reg. § 53.4947-1(c)(2)(i) provides that under § 4947(a)(2)(A), § 4941 does not apply to any amounts payable under the terms of a split-interest trust to income beneficiaries unless a deduction was allowed under § 170(f)(2)(B), 2055(e)(2)(B), or 2522(e)(2)(B) with respect to the income interest of any such beneficiary.

Currently, Trust is a split-interest trust described in § 4947(a)(2) and, therefore, subject to § 4941, which imposes an excise tax on acts of self-dealing. Under § 4947(a)(2)(A), the self-dealing rules of § 4941 do not apply, however, to any amounts payable under the terms of the split-interest trust to income beneficiaries as long as no deduction was allowed for such income interest under §§ 170(f)(2)(B), 2055(e)(2)(B), or 2522(e)(2)(B). As Trust is currently formed the income beneficiaries are limited to the lesser of the income of the trust in a given year or x percent of the total assets valued at the beginning of the year.

As reformed Trust would provide the income beneficiaries with an annual payment of x percent of the value of Trust, valued as of the first day of each taxable year. The current income beneficiaries are the children of the settlors therefore they are

disqualified persons as to Trust for purposes of § 4941. Because reformation of Trust based on the scrivener's error will have the effect of increasing the annual amount payable to the income beneficiaries from less than \underline{x} percent to \underline{x} percent, reformation could give rise to an act of self-dealing under § 4941(d)(1)(E) as a transfer to, or use by or for the benefit of, disqualified persons of the income or assets of a private foundation. Here, the circumstances presented indicate, however, that there is no self-dealing, and we are satisfied that the signatory parties to Trust never intended to create a NICRUT. Certain evidence supports this intention: (1) a court of competent jurisdiction determined that a scrivener's error occurred as a matter of law, (2) the trustees administered Trust as a standard \underline{x} percent CRUT for the initial years of its existence despite income from Trust less than \underline{x} percent of the assets, (3) C and C's spouse stated in an affidavit that, on several occasions, statements were made by the settlors and the drafting attorney indicating an intent for an annual payout of \underline{x} percent, and (4) there is no evidence that the income beneficiaries are reducing their own taxes or using the benefit of hindsight in making the change to Trust.

Conclusion

Based solely on the facts and representations submitted, we conclude that the judicial reformation of Trust as provided above, *ab initio*, does not violate § 664 and will not result in an act of self-dealing under § 4941.

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, we express or imply no opinion concerning whether Trust qualifies as a valid CRUT under § 664(d)(2) and the corresponding regulations.

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.

Pursuant to a power of attorney on file with this office, a copy of this letter is being forwarded to Trust's authorized representative.

Sincerely,

Faith P. Colson

Faith P. Colson

Senior Counsel, Branch 1

Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy of this letter for § 6110 purposes

cc: