

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:DOM:P&SI:2 - PLR-119129-99

Date:

May 25, 2000

A =

Trust =

Charity 1 =

Charity 2 =

Charity 3 =

Charity 4 =

Charity 5 =

Dear :

This letter responds to a letter dated December 1, 1999, and subsequent correspondence, submitted by A's authorized representative on behalf of A, requesting certain rulings under § 664 of the Internal Revenue Code concerning a proposed charitable remainder unitrust (CRUT).

The information submitted states that A proposes to create Trust and to contribute stock to Trust, which is intended to qualify as a CRUT under § 664. A will be the initial trustee of Trust. A represents that Trust is patterned after the sample inter vivos CRUT with one life outlined in Section 4 of Rev. Proc. 90-31, 1990-1 C.B. 539, 540. Trust provides that, until the termination of Trust, in each taxable year, the trustee shall pay to A a unitrust amount equal to the lesser of the trust income for the taxable year or five percent of the net fair market value of the trust property valued as of the last day of each taxable year. Upon the death of A, Trust shall terminate and the trustee shall distribute the trust property to one or more charitable organizations described in §§ 170(b)(1)(A), 170(c), 2055(a), and 2522(a).

Pursuant to § 4.01(39) of Rev. Proc. 2000-3, 2000-1 I.R.B. 103, 111, the Internal Revenue Service has generally discontinued

issuing rulings concerning whether an inter vivos CRUT with one life satisfies the requirements of § 664. Trust, however, contains provisions not addressed in Rev. Proc. 90-31, and therefore we will issue a ruling on whether those provisions disqualify the proposed trust under § 664. In accordance with Rev. Proc. 2000-3, however, we will not rule on whether Trust satisfies the requirements of § 664. The provisions of Trust not addressed in Rev. Proc. 90-31 are as follows:

Section 2.2 of Trust provides that for each taxable year of Trust, the unitrust amount shall equal the lesser of the following: (1) the trust income for such taxable year as determined under § 643(b) and the regulations thereunder or (2) five percent of the net fair market value of the trust property valued as of the last day of each taxable year of Trust and as adjusted for such year as indicated in Section 2 of Trust. In determining the amount for any taxable year, if at any time the trust property includes assets other than cash, cash equivalents and marketable securities (within the meaning of § 731 and the applicable regulations) and if the trustee is the grantor of Trust or a related or subordinate party to the grantor within the meaning of § 672(c) and the applicable regulations, then for purposes of the annual valuation described in the preceding sentence, trustee must use a current qualified appraisal, as defined in § 1.170A-13(c)(3) of the Income Tax Regulations, from a qualified appraiser, as defined in § 1.170A-13(c)(5), to value such assets.

Section 2.3.1 of Trust provides, in part, that notwithstanding anything in Trust to the contrary, during A's lifetime, trustee shall distribute such part or all of the trust property to such one or more charitable organizations (as defined in Section 2.4.3 of Trust) as A may appoint by a written, dated instrument that is signed by A and specifically refers to this power.

Section 2.4 of Trust provides, in part, that Trust shall terminate upon the death of A. Upon such termination, trustee shall administer the trust as follows: trustee shall distribute the balance of the trust property to such one or more charitable organizations, and in such proportions, as A may appoint (1) by a will or codicil specifically referring to and exercising this power of appointment, or (2) by a written, dated document that is signed by A and specifically refers to this power. Unless otherwise indicated, the most recently executed document described in clause (1) or (2) of the preceding sentence shall be deemed to revoke any earlier documents in conflict with it. Any such appointment shall be revocable until the first to occur of the date on which the instrument so exercising said power of appointment by its terms becomes irrevocable and the date on

which the property so appointed is distributable pursuant to such appointment. After any required distributions, trustee shall distribute the balance of the trust property to such one or more of the following that are charitable organizations, and in such proportions, as trustee in trustee's discretion shall select: Charity 1, Charity 2, Charity 3, Charity 4, and Charity 5. For purposes of Trust, the term "charitable organization" shall mean an organization described in each of §§ 170(b)(1)(A), 170(c), 2055(a), and 2522(a).

Section 664(d)(2) of the Code sets forth the requirements to be a charitable remainder unitrust (CRUT). A CRUT is a trust from which a fixed percentage (which is not less than 5 percent) of the net fair market value of the assets, valued annually, is to be paid, not less often than annually, to one or more persons (at least one of whom 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. No amount other than the above-described payments may be paid to or for the use of any person other than an organization described in § 170(c). Following the termination of the payments described above, 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 or, to the extent the remainder interest is in qualified employer securities (as defined in § 664(g)(4)), all or part of such securities are to be transferred to an employee stock ownership plan (as defined in § 4975(e)(7)) in a qualified gratuitous transfer (as defined by § 664(g)). With respect to each contribution of property to the trust, the value (determined under § 7520) of such remainder interest 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 1.664-3(a)(1)(i)(a) provides that, in general, the governing instrument of a CRUT must provide that the trust will pay not less often than annually a fixed net percentage of the net fair market value of the trust assets determined annually to a person or persons described in § 1.664-3(a)(3) for each taxable year of the period described in § 1.664-3(a)(5).

Section 1.664-3(a)(1)(i)(b) provides that, instead of the amount described in § 1.664-3(a)(1)(i)(a), the governing instrument may provide that the trust shall pay for any year either (1) the amount of trust income for a taxable year to the extent that such amount is not more than the amount required to be distributed under § 1.664-3(a)(1)(i)(a) or (2) the total of the amount of trust income for a taxable year to the extent that

such amount is not more than the amount required to be distributed under § 1.664-3(a)(1)(i)(a) and an amount of trust income for a taxable year that is in excess of the amount required to be distributed under § 1.664-3(a)(1)(i)(a) for such year to the extent that (by reason of § 1.664-3(a)(1)(i)(b)(1)) the aggregate of the amounts paid in prior years was less than the aggregate of such required amounts.

Section 1.664-1(a)(4) provides, in part, that, in order for a trust to be a charitable remainder trust, it must meet 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 (relating to grantors and others treated as substantial owners), but in no event prior to the time property is first transferred to the trust.

Section 1.664-3(a)(3)(ii) provides, in general, that a trust is not a CRUT 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, were applicable to such trust.

Section 1.664-3(a)(4) provides, in part, that no amount other than the amount described in § 1.664-3(a)(1) may be paid to or for the use of any person other than an organization described in § 170(c). 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 § 170(c). It further states that the governing instrument may provide that a portion of the trust assets may be distributed currently, or upon the death of one or more recipients, to an organization described in § 170(c).

Section 674(a) provides, in general, that the grantor shall be treated as the owner of any portion of a trust in respect of which the beneficial enjoyment of the corpus or the income therefrom is subject to a power of disposition, exercisable by the grantor or a nonadverse party, or both, without the approval or consent of any adverse party.

Section 674(b)(4) provides that § 674(a) shall not apply to a power to determine the beneficial enjoyment of the corpus or the income therefrom if the corpus or income is irrevocably payable for a purpose specified in § 170(c) (relating to definition of charitable contributions) or to an employee stock

ownership plan (as defined in § 4975(e)(7)) in a qualified gratuitous transfer (as defined in § 664(g)(1)).

Section 1.674(a)-1(b) provides that, in general, the grantor is treated as the owner of a portion of a trust if he or a nonadverse party or both has a power to dispose of the beneficial enjoyment of the corpus or income unless the power is described in § 1.674(a)-1(b)(1) to § 1.674(a)-1(b)(3).

Section 1.674(a)-1(b)(1)(iii) describes a power to choose between charitable beneficiaries or to affect the manner of their enjoyment of a beneficial interest.

Rev. Rul. 76-8, 1976-1 C.B. 179, provides that a grantor's reserved power to designate a substitute remainderman at his discretion is not a retention of power that disqualifies an otherwise qualifying charitable remainder trust under § 664 and the applicable regulations.

Based solely on the facts and representations submitted, we rule that the provisions of Trust discussed above (from Section 2.2, Section 2.3, and Section 2.4) will not disqualify Trust as a CRUT under § 664.

This ruling is directed only to the taxpayer 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 X's authorized representative.

Sincerely yours,  
H. GRACE KIM  
Assistant to the Chief, Branch 2  
Office of the Assistant Chief Counsel  
(Passthroughs and Special Industries)

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