

Internal Revenue Service

Department of the Treasury

Number: 200150019
Release Date: 12/14/2001
Index Number: 664.03-02,
664.04-00

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:2 - PLR-131760-00
Date:
September 13, 2001

Trust =

A =

B =

C =

D =

E =

F =

Charity =

State =

D1 =

x =

y =

Dear :

This letter responds to a letter dated December 11, 2000, and subsequent correspondence, submitted by the authorized representative of A as settlor and trustee of Trust, requesting certain factors and rulings regarding Trust under § 664 of the Internal Revenue Code.

The information submitted states that A established Trust on D1.

Article First, Section 1, of Trust provides that in each taxable year of Trust, the trustee shall pay, on the last day of each calendar month of such taxable year, to B and C as beneficiaries, in equal shares during their lifetimes and, upon the death of the first of them to die, to the survivor, and, upon the death of the survivor of them, to D, E, and F as beneficiaries, in equal shares during their lifetimes and in equal shares among the survivors or to the survivor of them, a unitrust amount equal to the lesser of (a) the trust income for the taxable year, or (b) x percent of the net fair market value of the trust assets determined as of the first business day of the taxable year. Any income of the trust in excess of the prescribed unitrust amount shall be added to principal in the taxable year received, except that the excess income first shall be paid to the beneficiaries, or the survivor of them, to the extent that the aggregate of the unitrust amounts paid to them, or the survivor of them, in prior years was less than the aggregate of the unitrust amounts prescribed under clause (b) of Article First, Section 1, for those years. For purposes of Trust, the term "income" shall have the meaning ascribed to it under § 643(b) and the regulations thereunder.

Article First, Section 2, provides that as of the end of the calendar month preceding the death of the survivor of the beneficiaries designated in Article First, Section 1, the payment of the unitrust amount to the survivor of them shall terminate and the trustee shall distribute the trust estate to Charity, provided, however, that the settlor retains the power, exercisable at any time or times during the settlor's lifetime by an instrument in writing delivered to the trustee, to add or remove as a remainder beneficiary, or change the shares of, one or more organizations described in §§ 170(c), 2055(a), and 2522(a); provided further, however, such subsequently designated organization shall also be an organization described in § 170(b)(1)(A) (other than in § 170(b)(1)(A)(vii) and (viii)).

Article First, Section 10, provides that Trust is intended to qualify as a charitable remainder unitrust (CRUT) within the meaning of § 664(d)(2) and is to be administered in such manner as to qualify for the exemption from taxation provided therein for a CRUT, and any provision of Trust, and any provision of State law, inconsistent with this intention shall be of no effect.

A requests that the Commissioner supply the valuation factor to be used to calculate the value of the charitable remainder

interest in Trust. A additionally requests a ruling that the provisions of Trust satisfy the requirements set out in §§ 664(d)(2)(A) and 664(d)(2)(D).

Pursuant to § 4.01(38) of Rev. Proc. 2001-3, 2001-1 I.R.B. 111, 117, the Internal Revenue Service has generally discontinued issuing rulings concerning whether a CRUT that provides for unitrust payments for one or two measuring lives satisfies the requirements described in § 664. In the present case, Trust provides for unitrust payments for five measuring lives. Therefore, your request is not subject to § 4.01(38) of Rev. Proc. 2001-3.

Section 664(d)(2)(A) provides that a charitable remainder unitrust is a trust 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.

Section 664(d)(2)(D) provides that a charitable remainder unitrust is a trust that, 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), 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 1.664-4(b) of the Income Tax Regulations provides that if a computation under § 1.664-4 or related sections requires the use of a factor that is not provided in § 1.664-4, the Commissioner may supply the factor upon a request for a ruling.

Based solely on the facts and representations submitted, we conclude the provisions of Trust satisfy the requirements set out in §§ 664(d)(2)(A) and 664(d)(2)(D). We further conclude that

the present worth of the remainder interest in Trust is \$y for each \$1 of initial trust corpus.

Except as set forth above, no opinion is expressed or implied as to the federal income tax consequences of the transactions described above under any other provision of the Code. We specifically express no opinion as to whether Trust qualifies as a CRUT under § 664.

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 A's authorized representative.

Sincerely yours,
J. THOMAS HINES
Chief, Branch 2
Office of the Associate
Chief Counsel
(Passthroughs &
Special Industries)

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