

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:2 - PLR-156308-02

Date:

April 14, 2003

Legend

X:

Y:

State:

Fund:

Dear :

This letter responds to your letter dated October 2, 2002, submitted on behalf of Y as Y's authorized representative, requesting a ruling that the proposed Amendment and Restatement of the Declaration of Trust of Fund and the transfer of X's remainder interests in Fund to Y do not affect the Fund's qualification as a pooled income fund within the meaning of § 642(c)(5) of the Internal Revenue Code or the applicability of the prior private letter rulings issued by the Service to Fund. Y also requests a ruling that after the adoption of the Amendment and Restatement of the Declaration of Trust the Fund will be treated as continuing in operation and will not be treated as a fund subject to § 1.642(c)-6(e)(4) of the Income Tax Regulations.

The information submitted states that X is a charitable nonprofit corporation formed under the laws of State and that it is an organization described in §§ 501(c)(3), 509(a)(1) and 170(b)(1)(A)(iii). X represents that X established Fund and that Fund has received letter rulings from the Service stating that Fund qualifies as a pooled income fund within the meaning of § 642(c)(5). Subsequent to the establishment of the Fund, Y was created as the parent organization with respect to X. Y is an organization described in §§ 501(c)(3), 509(a)(1) and 170(b)(1)(A)(vi). Y was created to conduct fundraising for X, to oversee X's operations, to manage X's investments, and to protect and safeguard X's endowments. Y's articles of incorporation state that its purposes are to support, operate for the benefit of, and carry out the purposes of X.

X proposes to adopt an Amendment and Restatement of the Declaration of Trust of Fund that would substitute Y for X in all relevant aspects of the Fund. X would also transfer its remainder interests in the Fund to Y. X represents that the income interests of the life beneficiaries of the Fund would not be affected by the proposed transaction. X also represents that the amendment to the declaration of trust would make no substantive change in how the Fund operates. X additionally represents that each income beneficiary has received notice of this amendment and restatement of the Fund and no income beneficiary has objected.

The proposed Amendment and Restatement of the Declaration of Trust would make four changes to the Fund. First, it would rename the Fund so that its title includes Y's name rather than X's name. Second, it would substitute Y for X as the co-trustee of the Fund. Third, Y, not X, would be responsible for maintaining the Fund according to its terms. Finally, for clarity the Amendment and Restatement would add a new provision detailing how Y can change the Fund's trustees.

Section 4.01(37) of Rev. Proc. 2002-3, 2002-1 I.R.B. 117, 123, provides that rulings will not ordinarily be issued on whether a pooled income fund satisfies the requirements described in § 642(c)(5). Rev. Proc. 88-53, 1988-2 C.B. 712, provides sample trust provisions for pooled income funds. By following the sample trust provisions, taxpayers can be assured that the Service will recognize the trust as satisfying the requirements of § 642(c)(5) if the trust (1) operates consistently with the terms of the trust instrument and (2) is a valid trust under local law. However, the instant case presents an issue not addressed by the sample trust provisions of Rev. Proc. 88-53, as to whether the governing instrument of the Fund may allow a charitable organization to be named as a replacement for X as the recipient of the remainder interests in the property contributed to the Funds.

Section 642(c)(5) provides that for purposes of § 642(c)(3), a pooled income fund is a trust (A) to which each donor transfers property, contributing an irrevocable remainder interest in such property to or for the use of an organization described in § 170(b)(1)(A) (other than in clauses (vii) or (viii)), and retaining an income interest for the life of one or more beneficiaries (living at the time of such transfer), (B) in which the property transferred by each donor is commingled with property transferred by other donors who have made or make similar transfers, (C) which cannot have investments in securities which are exempt from taxes imposed by subtitle A, (D) which includes only amounts received from transfers which meet the requirements of § 642(c)(5), (E) which is maintained by the organization to which the remainder interest is contributed and of which no donor or beneficiary of an income interest is a trustee, and (F) from which each beneficiary of an income interest receives income, for each year for which he is entitled to receive the income interest referred to in § 642(c)(5)(A), determined by the rate of return earned by the trust for such year.

Section 1.642(c)-6(e)(4) provides that if a pooled income fund has been in existence less than 3 taxable years immediately preceding the taxable year in which the transfer is made to the fund and the transfer to the fund is made after April 30, 1989, the highest rate of return is deemed to be the interest rate (rounded to the nearest two-tenths of one percent) that is 1 percent less than the highest annual average of the monthly § 7520 rates for the 3 calendar years immediately preceding the calendar year in which the transfer to the pooled income fund is made.

PLR-156308-02

Based solely on the facts and representations submitted, we conclude that the proposed Amendment and Restatement of the Declaration of Trust of Fund and the transfer of X's remainder interests in Fund to Y do not affect the Fund's qualification as a pooled income fund within the meaning of § 642(c)(5) or the applicability of the prior private letter rulings issued by the Service to Fund. Furthermore, after the Amendment and Restatement of the Declaration of Trust, the Fund will be treated as continuing in operation and will not be treated as a new fund subject to § 1.642(c)-6(e)(4).

Except as specifically ruled on above, no opinion is expressed concerning the federal tax consequences of the above transaction under any other provision of the Code.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code 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 Y.

Sincerely yours,

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

Enclosures: 2

Copy of this letter

Copy for § 6110 purposes