

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Date:

January 29, 2004

Trust =

A =

B =

Trustee =

Attorney =

D1 =

D2 =

D3 =

D4 =

Court =

State =

Dear :

This letter responds to a letter dated December 13, 2002, and subsequent information, submitted by Trust's authorized representative on behalf of Trustee and Trust, requesting a ruling under § 664 of the Internal Revenue Code on the qualification of Trust as a charitable remainder annuity trust (CRAT).

The information submitted states that on D1, A and B created Trust with the intention that Trust qualify as a CRAT under § 664(d)(1). Trustee is the trustee of Trust. Trust was funded on D2.

A and B established Trust with the assistance of Attorney. Following discussions with Attorney in which A and B expressed their intent to have Trust qualify as a CRAT, Attorney drafted Trust. In D3, Attorney advised A and B that as written, the trust agreement did not conform to A and B's instructions and did not qualify as a CRAT.

Because of the error, and because Trust is irrevocable, Trustee sought an order from Court, with notice to all beneficiaries and the State attorney general, authorizing an amendment ab initio of Trust. State law permits reformation of trusts, upon the approval of the court, to correct mistakes and accord with the creator's intent. No parties objected to the proposed reformation. On D4, Court issued an order that due to several scrivener's errors, Trust be reformed, ab initio.

Article 10 of Trust provides that Trust is irrevocable. However, Trustee shall have the power, acting alone, to amend Trust in any manner required for the sole purpose of ensuring that Trust qualifies and continues to qualify as a CRAT within the meaning of § 664(d)(1).

Section 664(d)(1) provides that for purposes of § 664, a charitable remainder annuity trust is a trust (A) from which a sum certain (which is not less than 5 percent nor more than 50 percent of the initial net fair market value of all property placed in trust) 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 of or lives of such individual or individuals, (B) from which no amount other than the payments described in § 664(d)(1)(A) and other than qualified gratuitous transfers described in § 664(d)(1)(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)(1)(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 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)), and (D) the value (determined under § 7520) of such remainder interest is at least 10 percent of the initial net value of all property placed in the trust.

Section 1.664-3(a)(4) of the Income Tax Regulations provides that 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).

Based solely on the representations submitted, we conclude that the judicial reformation of Trust, ab initio, does not violate § 664. Furthermore, assuming that the terms of the reformed Trust are otherwise valid under § 664, the reformed Trust will be treated as a valid CRAT under 664(d)(1), ab initio.

Except as specifically set forth above, no opinion is expressed as to the federal tax consequences of the above described facts under any other provision of the Code. Specifically, no opinion is expressed concerning whether Trust is or was a charitable remainder annuity trust within the meaning of § 664(d)(1).

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 Trust's authorized representative.

Sincerely,

J. Thomas Hines
Chief, Branch 2
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes