



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

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4941.00-00  
4941.04-00  
507.00-00

**Contact Person:**

**Identification Number:**

**Telephone Number:**

**Fax Number:**

Employer Identification Number:

A =  
B =  
C =  
D =  
E =  
F =  
G =  
H =  
I =  
J =  
K =

Dear \_\_\_\_\_ :

This letter supersedes our October 3, 2005 letter which was revoked by letter dated January 9, 2006. Based on the additional information you recently submitted, we have reconsidered your ruling request dated August 17, 2004 as to the proper treatment of the termination of B and whether the termination constitutes an act of self-dealing under section 4941 of the Internal Revenue Code.

A established B as a charitable remainder unitrust. A serves as Trustee of B and C serves as Independent Special Trustee of B. A is the sole non-charitable income beneficiary of B. The charitable remainderman of B was E, an organization recognized as an exempt organization under section 501(c)(3) of the Code and as a private foundation.

You have informed us that in accordance with the powers held by A under the trust agreement, A has changed the charitable remaindermen from E to F, G, H, I, J, and K. F through K are all organizations described in section 501(c)(3) of the Code and are publicly supported organizations under section 509(a).

A wishes to terminate B by selling his income interest in B to the charitable remaindermen, F through K, for an amount equal to the present value of A's life income interests in B. The actuarial values of the interest will be calculated using the discount rate in effect under section 7520 of the Code, and the methodology for valuing interests in a charitable remainder trust contained in section 1.664-4 of the Income Tax Regulations.

A is aware of no physical condition that would decrease his normal life expectancy. With the August 17, 2004 ruling request, A submitted a statement from his personal physician confirming that he had examined A and that there was no indication that A's life expectancy was less than would otherwise be expected for a man of his age.

D law permits said early termination of the trust, provided there is agreement among the trustees and beneficiaries. There is no requirement that D's Attorney General or any court be involved in a trust termination in which all beneficiaries consent.

### **RULINGS REQUESTED**

A requested the following rulings:

- (1) Early termination of B will not constitute an act of self-dealing under section 4941(a)(1) of the Code by A as trustee or as donor with respect to B.
- (2) Early termination of B will not constitute an act of self-dealing under section 4941(a)(1) of the Code by C as Independent Trustee with respect to B, and
- (3) The proposed termination of B will not be subject to termination tax under Section 507 of the Code.

### **STATEMENT OF LAW**

Section 664 of the Code exempts from income tax charitable remainder unitrusts, which it defines as those from which a fixed percentage of the net fair market value of its assets is paid to at least one person not an organization described in section 170(c) for a term of years, after which the remainder interest is transferred to an organization described in section 170(c).

Section 507(a) of the Code imposes substantial taxes on foundations that cease to qualify as private foundations, or commit acts giving rise to liability for tax under chapter 42.

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

Section 4941(d)(1) of the Code defines self-dealing as including any direct or indirect;

(A) sale or exchange, or leasing, of property between a private foundation and a disqualified person, or

(E) transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a private foundation.

Section 4946(a)(1) of the Code provides that for purposes of this subchapter, the term “disqualified person” means, with respect to a private foundation, a person who is--

(A) a substantial contributor to the foundation,

(B) a foundation manager (within the meaning of subsection (b)(1)),

Section 4946(a)(2) of the Code provides that for the purposes of paragraph (1), the term “substantial contributor” means a person who is described in section 507(d)(2)

Section 4946(b) of the Code provides that for the purposes of this subchapter, the term “foundation manager” means, with respect to any private foundation:

(1) an officer, director, or trustee of a foundation (or an individual having powers or responsibilities similar to those of officers, directors, or trustees of the foundation), and

(2) with respect to any act (or failure to act), the employees of the foundation having authority or responsibility with respect to such act (or failure to act).

Section 4947(a)(2) of the Code provides, in pertinent part, that in the case of a trust which is not exempt from tax under section 501(a), not all of the unexpired interests of which are devoted to charitable purposes, and which has accounts in trust for which a charitable deduction was allowed, sections 507 and 4941 apply as if such trust were a private foundation.

Section 4947(a)(2)(A) of the Code provides that section 4947(a)(2) shall not apply with respect to any amounts payable under the terms of such trust to non-charitable income beneficiaries.

## **ANALYSIS**

Section 4947(a)(2)(A) of the regulations provides that the tax on self-dealing applies to transfers to a disqualified person of the assets of a split-interest trust, except for amounts

payable under the terms of such trust to income beneficiaries. In this case, the income beneficiary is not expected to receive more than he would during the full term of the trust under the methodology for valuating interests in a charitable remainder trust. Furthermore, State Law provides for early termination under the facts presented.

The income beneficiary's physician has conducted a physical examination and stated under penalties of perjury that he finds no medical conditions expected to result in a shorter-than-average longevity (under section 1.72-9 of the Regulations); and the income beneficiary has signed similar statement.

Therefore, we rule that:

- (1) Early termination of B will not constitute an act of self-dealing under section 4941(a)(1) of the Code by A as trustee or as donor with respect to B.
- (2) Early termination of B will not constitute an act of self-dealing under section 4941(a)(1) of the Code by C as Independent Trustee with respect to B, and
- (3) The proposed termination of B will not be subject to termination tax under Section 507 of the Code.

This ruling will be made available for public inspection under section 6110 of the Code after deletions of identifying information are made. For details, see enclosed notice 437, Notice of Intention to Disclose. A copy of this ruling with deletions that we intend to make available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

This ruling is directed only to the organization that requested it. Section 6110(k)(3) of the Internal Revenue Code provides that it may not be used or cited by others as precedent.

This ruling is based on the understanding that there will be no material changes in the facts upon which it is based. Also we express no opinion as to the tax consequences of the transactions under other provisions of the Code. If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter. You should keep a copy for your permanent records.

Sincerely yours,

Lawrence M. Brauer

Steven Grodnitzky  
Acting Manager  
Exempt Organizations  
Technical Group 1

Enclosure  
Notice 437