



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Number: **200831031**
Release Date: 8/1/2008

Date: May 7, 2008

Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

SE:T:EO:RA:T:3

UIL:

507.00-00
4941.00-00
4945.00-00
4947.00-00

Legend:

Husband =
Wife =
CRUT =
Trust A =
Trust B =

Dear :

We have considered your ruling request dated September 25, 2007, concerning the federal income and excise tax consequences under sections 507, 4941, 4945 and 4947 of the Internal Revenue Code of 1986, as amended ("Code"), related to a proposed transfer of assets, in the manner and for the purposes described below. Our office is responding to your ruling requests originally numbered four through eight on your submission, which we have renumbered as one through five for purposes of this ruling.

Facts:

Husband and Wife created CRUT, a charitable remainder unitrust within the meaning of section 664(d)(2) of the Code on January 20, 1999. CRUT is irrevocable. The trustee is currently the sole trustee of CRUT and an independent trustee.

CRUT provides that the trustee shall distribute to Husband and Wife, in each taxable year, an amount equal to the lesser of: (a) the CRUT income for the taxable year, as defined in section 643(b) of the Code and the regulations thereunder, and (b) 6% of the net fair market value of the CRUT assets (the "Unitrust Amount") valued as of the first business day of each

taxable year of the CRUT. The Unitrust Amount for any year shall also include any amount of CRUT income for such year that is in excess of the amount required to be distributed under (b) to the extent that the aggregate of the amounts paid in prior years was less than the aggregate of the amounts computed as 6% of the net fair market value of the CRUT assets on the valuation dates.

After the death of the first spouse, the Unitrust Amount will be paid entirely to the surviving spouse. Upon the death of both Husband and Wife, the trustee shall distribute all of the then remaining principal and income of CRUT to exempt charitable organizations described in sections 170(c), 2055(a), and 2522(a) of the Code as designated by Husband and Wife or the survivor of them. In the absence of such designation, trustee, in its sole discretion, shall distribute all of the then remaining principal and income of CRUT to a qualified charity as described under sections 170(c), 2055(a), and 2522(a). Husband and Wife reserve the power to change the charitable remainder beneficiary.

Husband and Wife entered into a marriage separation agreement in December of 2004, to settle their marital and property rights. In January of 2005, a Judgment of Divorce was entered, incorporating the marriage separation agreement and dissolving the marriage. The marriage separation agreement provided that CRUT would be divided into two separate and equal trusts, known as Trust A and Trust B. Each trust is intended to qualify as a charitable remainder unitrust under section 664(d)(2) of the Code. As proposed, the assets of CRUT will be divided equally in kind between Trust A and Trust B.

You represent that Trust A and Trust B will be identical to CRUT except that (i) Husband will be the unitrust beneficiary of Trust A and Wife will be the unitrust beneficiary of Trust B; (ii) each spouse will retain a survivorship interest in the other's Unitrust Amount; (iii) Husband will have the right to designate the charitable beneficiaries of Trust A and Wife will have the right to designate the charitable beneficiaries of Trust B; (iv) the surviving spouse will not be permitted to appoint or change the charitable beneficiaries of the other spouse's new trust; and (iv) Husband will appoint an independent trustee of Trust A and Wife will appoint an independent trustee of Trust B.

You represent that the trustee of CRUT has tentatively approved the division of CRUT into Trust A and Trust B. However, the final dissolution of CRUT and its division into Trust A and Trust B is contingent upon a favorable private letter ruling.

You have requested the following rulings:

1. The proposed division of CRUT into Trust A and Trust B will not terminate CRUT's status as a trust described in and subject to the private foundation provisions of section 4947(a)(2) of the Code and will not result in the imposition of an excise tax under section 507(c).
2. Trust A and Trust B will not be treated as newly created organizations. The aggregate tax benefits of CRUT under section 507(d) of the Code will carry over to Trust A and Trust B in proportion to the amount of CRUT's assets transferred to Trust A and Trust B, subject to any liability which CRUT has under Chapter 42 to the extent not already satisfied by CRUT.

3. The proposed division of CRUT into Trust A and Trust B will not be an act of self-dealing under section 4941 of the Code; furthermore, the distributions of Unitrust Amounts from Trust A to Husband, and the proposed distributions of Unitrust Amounts from Trust B to Wife, will not be acts of self-dealing under section 4941.
4. The proposed division of CRUT into Trust A and Trust B will not be a taxable expenditure under section 4945 of the Code.
5. If reasonable in amount, payment of the legal and other expenditures incurred to affect the proposed transfer of CRUT's assets will not constitute an act of self-dealing under section 4941 of the Code and will not be taxable expenditures under section 4945.

Law:

Under section 4947(a)(2) of the Code, sections 507, 4941 and 4945 apply to certain "split interest" trusts (trusts with both charitable and non-charitable beneficiaries) as if they were private foundations.

Section 507(a) of the Code provides that, except as provided in section 507(b), a private foundation may terminate its private foundation status only under the specific rules set forth in section 507(a).

Section 507(b)(2) of the Code provides that in the case of a transfer of assets of any private foundation to another private foundation pursuant to any liquidation, merger, redemption, recapitalization, or other adjustment, organization or reorganization, the transferee foundation shall not be treated as a newly created organization.

Section 507(c) of the Code imposes a termination tax equal to certain defined amounts, which are generally the lower of the "aggregate tax benefit" resulting from the tax exempt status or the fair market value of the assets.

Section 507(d) of the Code, defines the term "aggregate tax benefit," which term is used in section 507(c), as one means to measure the section 507(c) tax.

Section 4941(a)(1) of the Code imposes an excise tax on each act of self-dealing between a disqualified person and a private foundation.

Section 4941(a)(2) of the Code imposes an excise tax on the participation of a foundation manager in an act of self-dealing between a disqualified person and a private foundation.

Section 4941(d)(1)(E) of the Code provides that the term "self-dealing" means any direct or indirect transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a private foundation.

Section 4945 of the Code imposes an excise tax on a private foundation's making of any

taxable expenditure under section 4945(d).

Section 4945(d)(4) of the Code provides the term "taxable expenditure" includes a grant to a private foundation unless the grantor exercises expenditure responsibility in accordance with section 4945(h).

Section 4946(a) of the Code provides the term "disqualified person" with respect to a private foundation includes a substantial contributor to the foundation (including the creator of a trust), and a foundation manager (including a trustee).

Section 4947(a)(2) of the Code provides generally that split-interest trusts are subject to the provisions of sections 507, 4941 and 4945 in the same manner as if such trusts were private foundations, but, under section 4947(a)(2)(A), not with respect to any amounts payable under the terms of such trust to income beneficiaries, unless a deduction was allowed under sections 170(f)(2)(B), 2055(e)(2)(B), or 2522(e)(2)(B).

Sections 1.507-3(a)(1) and (2)(i) of the Income Tax Regulations ("regulations") provide, in substance, that in the transfer of assets from one private foundation to one or more private foundations in a section 507(b)(2) of the Code transfer, each transferee private foundation shall not be treated as a newly created organization, but shall succeed to the transferor's aggregate tax benefit within the meaning of section 507(d), in proportion to the assets transferred to each.

Section 1.507-3(a)(4) of the regulations provides that if a private foundation incurs liability for one or more of the taxes imposed under chapter 42 (or any penalty resulting therefrom) prior to, or as a result of, making a transfer of assets described in section 507(b)(2) of the Code to one or more private foundations, in any case where transferee liability applies each transferee foundation shall be treated as receiving the transferred assets subject to such liability to the extent that the transferor foundation does not satisfy such liability.

Section 1.507-1(b)(6) of the regulations provides that if a private foundation transfers all or part of its assets to one or more other private foundations pursuant to a transfer described in section 507(b)(2) of the Code, such transferor foundation will not have terminated its foundation status under section 507(a)(1).

Section 1.507-3(c)(1) of the regulations provides that as used in section 507(b)(2) of the Code, the term "other adjustment, organization or reorganization" shall include any partial liquidation or any other significant disposition of assets to one or more private foundations.

Section 1.507-3(c)(2)(ii) of the regulations provides that the term "significant disposition of assets" means the transfer of 25% or more of the net assets of the foundation at the beginning of the year, which disposition may be made in a single year or in a series of related dispositions over more than one year.

Section 1.507-3(a)(9)(i) of the regulations provides that if a private foundation transfers all of its net assets to one or more private foundations that are effectively controlled, directly or indirectly, by the same person or persons that effectively controlled the transferor foundation, such transferee private foundation shall be treated as if it were the transferor private foundation for purposes of sections 4940 through 4948 of the Code and sections 507 through 509.

Section 1.507-3(b) of the regulations provides, in pertinent part, that a transfer of assets pursuant to any liquidation, merger, redemption, recapitalization, or other adjustment, organization or reorganization to an organization that is treated as described in section 501(c)(3) of the Code by virtue of section 4947 is not a taxable expenditure under section 4945(d).

Section 53.4945-6(b)(2) of the Foundation and Similar Excise Taxes Regulations (hereafter "Foundation regulations") provides that expenditures for unreasonable administrative expenses, including compensation, consultant fees, and other fees for services rendered, will ordinarily be taxable expenditures under section 4945(d)(5) of the Code unless the foundation can demonstrate that such expenses were paid or incurred in the good faith belief that they were reasonable and that the payment or incurrence of such expenses in such amounts was consistent with ordinary business care and prudence.

Section 53.4947-1(c)(2)(i) of the Foundation regulations provides that under section 4947(a)(2)(A) of the Code, section 4941 does not apply to any amounts payable under the terms of a split-interest trust to income beneficiaries unless a deduction was allowed under sections 170(f)(2)(B), 2055(e)(2)(B), or 2522(e)(2)(B) with respect to the income interest of any such beneficiary.

Rev. Rul. 2002-28, 2002-1 C.B. 941 provides that when a private foundation transfers all of its assets to other foundations in a transaction under section 507(b)(2) of the Code, there are no expenditure responsibility requirements under sections 4945(d)(4) or (h) with respect to the transfers because the transferee foundations are treated as the transferor.

Analysis:

Ruling 1:

You represent that CRUT is a charitable remainder unitrust under section 664(d)(2) of the Code. A charitable remainder unitrust is a split-interest trust described in section 4947(a)(2), and therefore, treated generally as if it were a private foundation. Although split interest trusts are not section 501(c)(3) or section 4947(a)(1) private foundations that are exclusively charitable, they are subject to section 507 termination rules that are appropriate. Section 507(b)(2) is applicable to the division of CRUT because the proposed transfer of 100 percent of CRUT's assets, under the prevailing divorce proceedings to Trust A and Trust B equally, will qualify as transfers meeting the requirements of a "significant disposition of assets" under sections 1.507-3(c)(1) and (2)(ii) of the regulations. Because the disposition by CRUT qualifies as a section 507(b)(2) transfer and CRUT has not given notice of its intent to terminate under section 507(a)(1), the termination tax will not be imposed under section 507(c).

Therefore, the division of CRUT into Trust A and Trust B will not terminate its status and will not result in the imposition of the termination tax under section 507(c) of the Code.

Ruling 2:

The proposed transfer of 100 percent of CRUT's assets, under the prevailing divorce

proceedings to Trust A and Trust B equally, qualifies as a transfer meeting the requirements of a "significant disposition of assets" under sections 1.507-3(c)(1) and (2)(ii) of the regulations. Accordingly, Trust A and Trust B will not be treated as newly created private foundations under section 1.507-3(a)(1) of the regulations. Furthermore, as enumerated under section 1.507-3(a)(1), Trust A and Trust B succeed to the aggregate tax benefits of CRUT on a pro rata basis determined by the fair market value of the assets. Pursuant to section 1.507-3(a)(4), if prior to or as a result of making this disposition, CRUT incurs liability for one or more of the taxes imposed under chapter 42 (or any penalty resulting therefrom) in any case where transferee liability applies, Trust A and Trust B shall be treated as receiving the transferred assets subject to such liability to the extent that CRUT does not satisfy such liability.

Ruling 3:

Husband and Wife are disqualified persons with respect to CRUT under section 4946 of the Code because they are substantial contributors to CRUT, which is treated as a private foundation under section 4947(a)(2) because it is a split interest trust. Thus, CRUT is subject to section 4941, which imposes a tax on acts of self dealing by disqualified persons.

The only interest that either Husband or Wife have in CRUT is the payment of the Unitrust Amount under the provisions of section 664(d)(2) of the Code. Husband and Wife have exchanged a one-half interest in a unitrust (and a contingent survivor's unitrust interest) payment in CRUT for a full unitrust payment in Trust A and Trust B, respectively, having one-half of the assets of CRUT prior to its division. Thus, Husband and Wife are likely to receive more or less the same unitrust payment as before the division. Section 53.4947-1(c)(2) of the Foundation regulations in substance, provides that the amounts payable under charitable remainder split-interest trusts to income beneficiaries are not subject to section 4941. Thus, the disqualified persons are insulated from self-dealing as far as each of their income interests in CRUT are concerned based on the fact that the unitrust payment is the same before and after the division of CRUT. Because none of the disqualified persons receive any interest in CRUT principal, no self-dealing transaction has occurred within the meaning of section 4941(d).

Therefore, the proposed division of CRUT and the proposed distributions of unitrust amounts from Trust A to Husband and from Trust B to Wife will not be acts of self-dealing under section 4941 of the Code.

Ruling 4:

As more fully described in Ruling 1 above, the transfer from CRUT to Trust A and Trust B qualifies as a disposition under section 507(b)(2) of the Code. Such a disposition does not result in a taxable expenditure under section 4945(d). Because Trust A and Trust B are treated as if they are CRUTs, there is no expenditure responsibility requirements that must be exercised by CRUTs under sections 4945(d)(4) or (h) with respect to the transfers. See also Rev. Rul. 2002-28. Therefore, the proposed division of CRUT will not be a taxable expenditure and will not result in the exercise of expenditure responsibility.

Ruling 5:

Under section 53.4945-6(b)(2) of the Foundation regulations, legal fees and other

expenses incurred by a trust in a good faith belief that they are reasonable and consistent with ordinary care and prudence, will not constitute taxable expenditures. No act of self-dealing or taxable expenditure will occur within the meaning of sections 4941 and 4945 of the Code respectively, to the extent that the expenses are reasonable and proportionate to the CRUT's tax risk. Herein, trust principal remains preserved for charitable interests. There has not been an increase in the unitrust amount at the expense of the charitable interest. There are no other transactions with the income beneficiaries that affect the trust principal. Any expenses paid pursuant to the division of CRUT, assuming such expenses are reasonable, are justified as necessary to carry out CRUT purpose to facilitate the smooth functioning and operation of CRUT, which was likely not possible under the prevailing divorce proceedings.

Therefore, if reasonable in amount, payment from CRUT assets of legal fees and other expenditures incurred by CRUT to effectuate the division of CRUT to Trust A and Trust B will not constitute an act of self-dealing under section 4941 of the Code, nor will it constitute taxable expenditures under section 4945.

Accordingly, based upon the information submitted in your ruling request, we rule as follows:

1. The proposed division of CRUT into Trust A and Trust B will not terminate CRUT's status as a trust described in and subject to the private foundation provisions of section 4947(a)(2) of the Code and will not result in the imposition of an excise tax under section 507(c).
2. Trust A and Trust B will not be treated as newly created organizations. The aggregate tax benefits of CRUT under section 507(d) of the Code will carry over to Trust A and Trust B in proportion to the amount of CRUT's assets transferred to Trust A and Trust B, subject to any liability which CRUT has under Chapter 42 to the extent not already satisfied by CRUT.
3. The proposed division of CRUT into Trust A and Trust B will not be an act of self-dealing under section 4941 of the Code; furthermore, the distributions of Unitrust Amounts from Trust A to Husband, and the proposed distributions of Unitrust Amounts from Trust B to Wife, will not be acts of self-dealing under section 4941.
4. The proposed division of CRUT into Trust A and Trust B will not be a taxable expenditure under section 4945 of the Code.
5. If reasonable in amount, payment of the legal and other expenditures incurred to affect the proposed transfer of the CRUT's assets will not constitute an act of self-dealing under section 4941 of the Code and will not be taxable expenditures under section 4945 of the Code.

This ruling will be made available for public inspection under section 6110 of the Code after certain 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 Code provides that it may not be used or cited by others as precedent.

This ruling is based on the facts as they were presented and on the understanding that there will be no material changes in these facts. This ruling does not address the applicability of any section of the Code or regulations to the facts submitted other than with respect to the sections described. Because it could help resolve questions concerning your federal income tax status, this ruling should be kept in your permanent records.

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.

In accordance with the Power of Attorney currently on file with the Internal Revenue Service, we are sending a copy of this letter to your authorized representative.

Sincerely,

/s/

Robert C. Harper, Jr.
Manager, Exempt Organizations
Technical Group 3

Enclosure
Notice 437