



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Release Number: **200850046**
Release Date: 12/12/08
Date: September 17, 2008

Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

UIL: 4941.00-00

Legend:

Trust =

Dear :

We have considered your ruling request dated December 21, 2007, and subsequent submissions, concerning the federal income and excise tax consequences under section 4941, of the Internal Revenue Code of 1986, as amended ("Code"), related to a proposed reformation of a charitable remainder unitrust, in the manner and for the purposes described below. Our office is responding to your ruling request originally numbered two on your submission. The other ruling will be dealt with separately by another office.

Facts:

The information submitted shows that you are the trustee and charitable beneficiary of the Trust, which qualifies as a charitable remainder unitrust under section 664(d)(2) of the Code. The donor of the Trust intended to establish the non-charitable interest of the Trust for the lives of donor and donor's spouse, or for a twenty-year term, whichever was longer, and that in the event that donor or donor's spouse did not survive the entire twenty-year term, the income interest during the remainder of the term would be payable to donor's issue by right of representation. You report that because of a scrivener's error the Trust was executed with a provision that established the non-charitable interest of the Trust only for the lives of donor and donor's spouse. As trustee, you seek reformation of the Trust to conform to donor's intentions.

You have submitted the following documents in support of your ruling request. These documents include the following: (1) the original Trust executed by donor, evidencing the current provision that is sought to be reformed; (2) a copy of the new Trust, evidencing the reformed provision; (3) your sworn Petition for Reformation filed with the appropriate court giving a detailed account as to donor's intent, the scrivener's error and how donor executed the Trust without noticing the error; (4) donor's signed affidavit clearly evidencing donor's intent to

establish a Trust under the reformed provision, which affidavit was filed in conjunction with the above referenced petition; and, (5) a signed order from the appropriate court evidencing that the court found by clear and convincing evidence that: (i) due to a mistake in the expression of donor's intent, the Trust failed to accurately implement donors intent; (ii) that you, as both trustee and charitable beneficiary of the Trust, consent to the reformation of the Trust; (iii) that the state's attorney general consents to the reformation of the Trust; and, (iv) that donor and her spouse, as successor beneficiary under the Trust, consent to the reformation. The court granted the requested relief of trust reformation contingent upon you receiving a favorable Private Letter Ruling from the Internal Revenue Service.

You have requested the following ruling:

Reformation of the Unitrust to provide that the unitrust period extends for the longer of the lifetimes of the Donor and her spouse, or twenty years from the date of execution, and that during that term the Unitrust payments shall be made to the Donor, then to her spouse if he survives her, then to her issue by right or representation, is not a prohibited self-dealing transaction between a disqualified person and a foundation manager within the meaning of section 4941.

Law:

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 generally imposes a tax on the participation of a foundation manager in an act of self-dealing.

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

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), a family member of a substantial contributor (including children), and a foundation manager (including a trustee). Under section 4946(d), the term "family members" includes spouses.

Section 4947(a)(2) of the Code provides generally that split-interest trusts are subject to the provisions of section 4941 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 section 170(f)(2)(B), 2055(e)(2)(B), or 2522(e)(2)(B).

Section 53.4947-1(c)(2)(i) of the Foundation and Similar Excise Taxes 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 section 170(f)(2)(B), 2055(e)(2)(B), or 2522(e)(2)(B) with respect

to the income interest of any such beneficiary.

Analysis:

The issue is whether judicial reformation of the Trust from its inception will be considered an act of self-dealing between the Trust and donor, donor's spouse and donor's issue, as disqualified persons, under section 4941 of the Code.

As a charitable remainder unitrust under section 664(d)(2) of the Code, the Trust is a split-interest trust described in section 4947(a)(2) and, therefore, subject to section 4941, which imposes an excise tax on acts of self-dealing. Under section 4947(a)(2), the self-dealing rules of section 4941 do not apply to any amounts payable under the terms of the split-interest trust to income beneficiaries as long as no deduction was allowed for such income interest under sections 170(f)(2)(B), 2055(e)(2)(B), or 2522(e)(2)(B).

The donor of the Trust is considered a substantial contributor to the Trust, and as such, the donor, the donor's spouse and the donor's issue are each disqualified persons with respect to the Trust under section 4946(a) of the Code. Judicial reformation of the Trust may have the effect of increasing the annual amount payable to donor, donors spouse and donor's issue, and may be considered a transfer to, or use by or for the benefit of, disqualified persons of the income or assets of a private foundation under section 4941.

Review of the facts presented does not reveal any act of self-dealing. The facts clearly show that donor never intended to create a charitable remainder unitrust with the provision that established the non-charitable interest of the Trust only for the lives of donor and donor's spouse. Certain evidence supports this intent: (1) your sworn Petition for Reformation filed with the appropriate court giving a detailed account as to donor's intent, the scrivener's error and how the donor executed the Trust without noticing the error; (2) donor's signed affidavit clearly evidencing donor's intent to establish a Trust under the reformed provision, which affidavit was filed in conjunction with the above referenced petition; (3) a signed order from the appropriate court evidencing that the court found by clear and convincing evidence that due to a mistake the Trust failed to accurately implement donors intent; and, (4) the state's attorney general's consent to the reformation. We conclude that the judicial reformation of the Trust will not be an act of self-dealing under section 4941 of the Code.

Ruling:

Accordingly, based upon the information submitted in your ruling request, we rule that the proposed reformation of the Trust will not be an act of self-dealing under section 4941 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. Specifically, no opinion is expressed concerning whether _____ and _____ Trust as reformed qualify as a charitable remainder unitrust under section 664 of the Code. Because it could help resolved 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,

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

Enclosure
Notice 437