

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Date:  
December 15, 2010

Taxpayer =

Dear :

This is in response to a letter from your authorized representative, dated August 30, 2010, requesting a ruling on whether inclusion of a certain trust provision will prevent a proposed trust from qualifying as a charitable remainder annuity trust (CRAT) under § 664(d)(1) of the Internal Revenue Code (Code).

Facts

Taxpayer intends to form a trust and fund the trust with appreciated real property. The proposed trust (Trust) is intended to qualify as a valid CRAT under § 664(d)(1) and the corresponding regulations.

Taxpayer proposes to include the following provision (Provision) in Trust:

“The Trustee shall have the discretion to provide for the annuity payment to Trustor by allocating a portion of the trust assets to purchase an annuity contract which will guarantee to pay to the trust a sum equal to or greater than the Trustor’s computed annual annuity payout for the duration of the trust. If the Trustee chooses to provide for the Trustor’s annuity payment in this manner, the Trustee may only purchase such contract from an insurer with an A.M. Best Company Insurer Financial Strength Rating of “Superior” (A++, A+) or “Excellent” (A, A). After securing such contract, the Trustee may distribute any amount other than the amount described in Treas. Reg. Section 1.664-2(a)(1) to the charities named in Schedule B any time during the term of the trust. Upon the termination of all noncharitable interests, the Trustee shall distribute all of the principal and income of the trust (other than any amount due to the Annuity Recipient or the estate of the Annuity Recipient) to the charitable organizations, in the percentages designated, as provided in Schedule B.”

The Taxpayer anticipates that the trustee of Trust will purchase an annuity contract over which Trust possesses all incidence of ownership and is entitled to all payments, that the annuity contract will pay the annuity amount annually to Trust, and that the trustee of Trust will then pay the annuity amount to the trustor for the trustor's life.

Your authorized representative has requested a ruling that inclusion of this provision within Trust will not jeopardize the status of the trust as a CRAT under § 664(d)(1).

Pursuant to § 4.01(37) of Rev. Proc. 2010-3, 2010-1 I.R.B. 110, the Internal Revenue Service (Service) ordinarily will not issue rulings as to whether a charitable remainder trust that provides for annuity payments for one or two measuring lives satisfies the requirements described in § 664.

In lieu of seeking the Service's advance approval of a CRAT, Taxpayer is directed to follow the sample CRAT provisions outlined in Rev. Proc. 2003-53, 2003-2 C.B. 230. By following the models contained in Rev. Proc. 2003-53, Taxpayer can be assured that the Service will recognize a trust as meeting all of the requirements of a qualified CRAT under § 664(d)(1), provided that the trust operates in a manner that is consistent with the terms of the trust instrument and provided the trust is a valid trust under applicable local law.

In the present case, Trust will contain a provision not addressed in Rev. Proc. 2003-53. Therefore, we will rule on whether that provision will disqualify Trust as a CRAT under § 664(d)(1).

### **Law and Analysis**

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 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 fair market value of all property placed in the trust.

Section 1.664-2(a)(1) of the Income Tax Regulations provides that to qualify as a charitable remainder annuity trust the governing instrument must provide that the trust will pay a sum certain not less often than annually to a person or persons described in § 1.664-2(a)(3) for each taxable year of the period specified in § 1.664-2(a)(5).

Section 1.664-2(a)(4) provides that no amount other than the amount described in § 1.664-2(a)(1) may be paid to or for the use of any person other than an organization described in § 170(c). An amount is not paid to or for the use of any person other than an organization described in § 170(c) if the amount is transferred for full and adequate consideration. 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). Notwithstanding the preceding sentence, the grantor may retain the power exercisable only by will to revoke or terminate the interest of any recipient other than an organization described in § 170(c). The governing instrument may provide that any amount other than the amount described in § 1.664-2(a)(1) shall be paid (or may be paid in the discretion of the trustee) to an organization described in § 170(c) provided that in the case of distributions in kind, the adjusted basis of the property distributed is fairly representative of the adjusted basis of the property available for payment on the date of payment. For example, the governing instrument may provide that a portion of the trust assets may be distributed currently, or upon the death of one or more recipients, to an organization described in § 170(c).

Based solely on information submitted and representations made, we conclude that inclusion of Provision in Trust will not prevent Trust from qualifying as a CRAT under § 664(d)(1).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express or imply no opinion concerning whether Trust qualifies as a valid CRAT under § 664(d)(1) and the corresponding regulations.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

/s/

James A. Quinn  
Senior Counsel, Branch 3  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

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

cc: