

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:2 - PLR-107630-00

Date:

September 29, 2000

X =
A =
Trust =

State =
Court =

D1 =

D2 =

x =

Dear :

This letter responds to a letter dated March 20, 2000, and subsequent correspondence, submitted by you as Trust's authorized representative on behalf of Trust, requesting a ruling under § 664 of the Internal Revenue Code concerning the proposed modification of Trust.

The information submitted states that X established Trust on D1. X died on D2, and was survived by A. Pursuant to the terms of Trust, a trust represented as being a charitable remainder annuity trust under § 664 (the CRAT) was established for the benefit of A.

Article 4.01(A) of Trust provides for the trustees of the CRAT to distribute annually to A, for the duration of A's life, an annuity amount equal to 5 percent of the initial fair market value of the assets placed in the CRAT. Upon A's death, the trustees shall distribute the remaining principal and undistributed income of the CRAT to any one or more charities selected by the trustees that are organizations described in §§ 170(c) and 2055(a) (Qualified Charities).

The trustees of the CRAT propose to modify Trust to authorize the trustees to make distributions of principal and

income from time to time during A's lifetime to any one or more Qualified Charities selected by the trustees, but only to the extent that the fair market value of the assets of the CRAT exceeds \$x at the time of such distribution. The trustees shall make no distribution of principal or income from the CRAT to the extent that such distribution would endanger the ability of the CRAT to pay the required fixed 5 percent annuity to A for the duration of A's lifetime.

The trustees have obtained the consent of A to the proposed modification. The trustees have also obtained the consent of the attorney general of State, the laws of which govern the rights and duties of the parties and beneficiaries of Trust, pursuant to the terms of Trust. The trustees have petitioned Court for an order directing the modification of Trust as described above.

Section 664(d)(1) of the Code sets forth the requirements for a trust to be a charitable remainder annuity trust. Section 664(d)(1)(A) provides that 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. Section 664(d)(1)(B) provides that 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).

Section 1.664-2(a)(1)(i) of the Income Tax Regulations provides that, in general, the governing instrument of a CRAT 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)(3)(i) provides, in part, that the amount described in § 1.664-2(a)(1) must be payable to or for the use of a named person or persons, at least one of which is not an organization described in § 170(c).

Section 1.664-2(a)(4) provides, in part, 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). 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). 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. It further states that 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).

Section 1.664-1(e)(1) provides that an amount distributed by a charitable remainder trust to an organization described in § 170(c) other than the annuity or unitrust amount shall be considered as a distribution of corpus and of those categories of income specified in § 1.664-1(d)(1) in an order inverse to that described in § 1.664-1(d)(1). The character of such amounts shall be determined as of the end of the taxable year of the trust in which the distribution is made after the character of the annuity or unitrust amount has been determined.

Based solely on the facts and representations submitted, we rule that the proposed modification of Trust discussed above will not disqualify the CRAT as a CRAT under § 664.

Except as specifically set forth above, no opinion is expressed or implied concerning the federal tax consequences of the facts described above under any other provision of the Code, including whether the CRAT was or is a CRAT under § 664 of the Code.

This ruling is directed only to the taxpayer who requested it. 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, copies of this letter are being sent to Trust's authorized representatives.

Sincerely yours,
J. THOMAS HINES
Acting Branch Chief, Branch 2
Office of the Associate, Chief Counsel
(Passthroughs and Special Industries)

Enclosures: 2
Copy of this letter
Copy for Section 6110 purposes