Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Number: **200143028**
Release Date: 10/26/2001
Index Numbers: 507.00-00; 664.03-02; 4941.00-00; 4945.00-00; 4947.02-00

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:3 PLR-116549-00
Date:
July 31, 2001

LEGEND:

Trust =

A =

B =

Trust A =

Trust B =

Foundation =

Date 1 =

Dear

This letter responds to a letter dated August 21, 2000, written on behalf of Trust, requesting the following rulings regarding a proposed division of Trust, a charitable remainder unitrust, into two separate trusts, Trust A and Trust B, each of which will also comply with the requirements under § 664 of the Internal Revenue Code:

1) The proposed division of Trust into Trust A and Trust B will not cause Trust, Trust A, or Trust B to fail to qualify as charitable remainder trusts under § 664;

2) The proposed division of Trust into Trust A and Trust B will not terminate Trust's status as a trust described in, and subject to, the private foundation provisions of § 4947(a)(2), and will not result in the imposition of an excise tax under § 507(c);

3) Trust A and Trust B will not be treated as newly created organizations. The aggregate tax benefits of Trust under § 507(d) will carry over to Trust A and Trust B in proportion to the amount of Trust's assets transferred to Trust A and Trust B, subject to any liability which Trust has under Chapter 42 of the Code to the extent not already satisfied by Trust;

4) The proposed division of Trust into Trust A and Trust B will not be an act of self-dealing under § 4941;

5) The proposed division of Trust into Trust A and Trust B will not be a taxable expenditure under § 4945; and

6) If reasonable in amount, the legal and other expenditures incurred by Trust to effect the proposed division of Trust will not be self-dealing under § 4941, or taxable expenditures under § 4945.

FACTS

On Date 1, A and B, who were then husband and wife, established Trust. Trust provides for quarterly unitrust payments to be made to A and B in equal proportions during their joint lifetimes, and after the death of either of them, wholly to the survivor during his or her lifetime. A and B each have the power, exercisable only by his or her last will or codicil, to terminate the right of the surviving settlor in the deceased settlor's one-half share in the unitrust amount. After the death of the surviving settlor, the Trust assets will be distributed to a charitable organization described in §§ 170(c), 2055(a), and 2522(a). It is represented that Trust satisfies the requirements under § 664(d)(2).

A and B are in the process of obtaining a divorce and propose dividing Trust into two separate charitable remainder unitrusts–Trust A for the benefit of A and Trust B for the benefit of B. The terms of each of Trust A and Trust B are identical to the terms of Trust, except for the following:

1) Trust A and Trust B will each hold 50 percent of the trust principal and any undistributed income of Trust;

2) A will be the sole income beneficiary and sole trustee of Trust A, with the power to appoint and remove successor trustees and to designate the charitable remainder beneficiary;

3) B will be the sole income beneficiary and sole trustee of Trust B, with the power to appoint and remove successor trustees and to designate the charitable remainder beneficiary;

4) The name of the contingent charitable beneficiary, Foundation, will be changed to reflect the organization's new name, and

5) The provisions regarding the valuation of unmarketable assets will be revised to conform with § 1.664-1(a)(7) of the Income Tax Regulations, which was promulgated after execution of Trust.

LAW AND ANALYSIS

Rulings 2 through 6

Section 4946(a)(1)(A) defines the term "disqualified person" to include a substantial contributor to the foundation.

Section 4946(a)(1)(D) together with § 4946(d) define the term "disqualified person" to include a spouse of a substantial contributor, among others.

Section 4947(a)(2) describes trusts not exempt from federal income tax under § 501(a), not all of the unexpired interests in which are devoted to purposes in § 170(c)(2)(B), and which have amounts in trust for which a deduction was allowed under §§ 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522, as split interest trusts, and provides that §§ 507, 508(e) (to the extent applicable), 4941, 4943 (with exception), 4944 (with exception), and 4945 shall apply as if such trusts were a private foundation.

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

Section 507(b)(2) provides that in the case of 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), in substance, imposes a tax equal to certain defined amounts.

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

Section 1.507-1(b)(6) 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 § 507(b)(2), such transferor foundation will not have terminated its private foundation status under § 507(a)(1).

Section 1.507-3(c)(1) provides, in part, that for purposes of § 507(b)(2), 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) provides, in substance, that the term a "significant disposition of assets" means the transfer of 25 percent 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.

Sections 1.507-3(a)(1) and (2) provide, in substance, that in the transfer of assets from one private foundation to one or more private foundations in a § 507(b)(2) 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 § 507(d).

Section 1.507-4(b) provides that the excise tax on termination of private foundation status under § 507(c) does not apply to a transfer of assets pursuant to § 507(b)(2).

Section 4941 imposes an excise tax on any act of self-dealing between a private foundation and any disqualified person defined under § 4946.

Section 4945 imposes an excise tax on a private foundation's making any taxable expenditure under § 4945(d).

Although split interest trusts are not § 501(c)(3) or § 4947(a)(1) private foundations that are exclusively charitable, they are subject to § 507 termination rules that are appropriate. Section 4947(a)(2) subjects split interest trusts to the provisions of § 507. Section 507(b)(2) is applicable to the division of the Trust. Since the Trust will transfer all of its net assets equally to Trust A and Trust B, under § 1.507-1(b)(6), the Trust will not have terminated its private foundation status under § 507(a)(1). Accordingly, the excise tax imposed under § 507(c) is not applicable to it.

The transfer of all of the Trust's assets, under the prevailing divorce proceedings, to Trust A and Trust B will qualify as transfers meeting the requirements of §§ 1.507-3(c)(1) and (c)(2)(ii). Accordingly, under § 1.507-3(a)(1), Trust A and Trust B will not be treated as newly created private foundations. Further, such trusts shall, under § 1.507-3(a)(2)(i) succeed to aggregate tax benefit of the transferor organization, the Trust, on a pro rata basis determined by fair market value of the assets.

The only interest that either A or B had in the Trust was the payment of the unitrust amount under the provisions of § 664(d)(2). They have each exchanged a one-half interest in a unitrust payment in the Trust for a full unitrust payment in a trust having fewer assets, one-half of the assets of the Trust prior to its division. Thus, they are likely to receive more or less the same unitrust payment as before. However it

makes no difference for purposes of § 4941 whether either one or both is receiving more or less of a unitrust payment after the division of the Trust assets. Section 53.4947-1(c)(2) of the Foundation and Similar Excise Taxes Regulations provides, in substance, that the amounts payable under charitable remainder split-interest trusts to the income beneficiaries are not subject to § 4941 (or § 507 or § 4945). Thus, the disqualified persons are insulated from self-dealing as far as each of their income interests in the Trust are concerned based on the fact that the unitrust payment is the same before and after the division of the Trust. Since neither of the disqualified persons receive any interest in the assets of the trust principal, no self-dealing transaction has occurred within the meaning of § 4941(d).

The trust principal remains preserved for charitable interests. There has been no increase in the unitrust amount at the expense of the charitable interest. Any expenses paid pursuant to the division of the Trust, assuming such expenses are reasonable, are justified as necessary to carry out trust purpose to facilitate the smooth functioning and operation of the trusts which was likely not possible under the prevailing divorce proceedings. There are no other transactions with the income beneficiaries that affect the trust principal. Accordingly, again no self-dealing transaction has occurred.

Based on the same analysis as applied in the two preceding paragraphs, no taxable expenditure has occurred under § 4945. See also § 53.4945-6(b)(2). Further, under §§ 1.507-3(a)(7) and (9), the Trust will not be required to exercise "expenditure responsibility" under §§ 4945(d) and (h) with respect to the assets transferred to Trust A and Trust B. The Trust will dispose of all of its assets within the meaning of § 1.507-3(a)(7) and Trust A and Trust B will be controlled by the same persons who controlled the Trust within the meaning of § 1.507-3(a)(9).

CONCLUSIONS

After applying the relevant law to the information provided and the representations made, we conclude the following:

1. The proposed division of Trust into Trust A and Trust B will not cause Trust, Trust A, or Trust B to fail to qualify as charitable remainder trusts under § 664;

2. The proposed division of Trust into Trust A and Trust B will not terminate Trust's status as a trust described in, and subject to, the private foundation provisions imposed on split-interest trusts under § 4947(a)(2), and will not result in the imposition of an excise tax under § 507(c);

3. Trust A and Trust B will not be treated as newly created organizations. Trust A and Trust B shall succeed to the aggregate tax benefit of Trust defined by § 507(d) in proportion to the fair market value of the assets transferred to Trust A and Trust B;

4. The proposed division of Trust into Trust A and Trust B will not be an act of self-dealing under § 4941;

5. The proposed division of Trust into Trust A and Trust B will not be a taxable expenditure under § 4945; and

6. If reasonable in amount, the legal and other expenditures incurred by Trust to effect the proposed division of Trust will not be self-dealing under § 4941 nor a taxable expenditure under § 4945.

CAVEATS

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, no opinion is expressed concerning whether Trust qualifies as a charitable remainder trust under § 664 or whether Trust A or Trust B each will qualify as a charitable remainder trust under § 664.

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.

Under a power of attorney on file with this office, we are sending a copy of this letter to Trust.

Sincerely yours,
Mary Beth Collins
Senior Technician Reviewer, Branch 3
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

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