

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact: \_\_\_\_\_, ID No.

Telephone Number:

Refer Reply To:  
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PLR-140360-03

Date:  
June 21, 2004

Trust =

X =

Y =

Foundation =

State =

D1 =

D2 =

Dear \_\_\_\_\_ :

This letter responds to a letter dated August 13, 2002, and subsequent correspondence, submitted on behalf of the Trust by its authorized representative, requesting rulings under §§ 664 and 4941 of the Internal Revenue Code.

The information submitted states that on D1, X created Trust, an irrevocable trust which is represented as being a charitable remainder unitrust (CRUT) described in § 664(d)(2). As drafted, the terms of Trust provide that the trustees of Trust shall pay an annual fixed percentage unitrust amount equal to 7 percent of the net fair market value of the trust assets to X during X's lifetime (the unitrust amount). After X's death, the trustees are to distribute the then remaining trust assets to Foundation, represented as being an organization described in §§ 170(c), 2055(a), and 2522(a).

Subsequent to D1, X indicated to Y, the drafter and co-trustee of Trust, that X had intended for Trust to pay a unitrust amount of 5 percent, rather than 7 percent. Due to miscommunication and misunderstanding between X and Y, the incorrect percentage was included in the Trust instrument.

On D2, the relevant court of State issued a decree correcting this scrivener's error, changing the unitrust amount from 7 percent to 5 percent, retroactive to D1. X, the trustees of Trust, Foundation, and the attorney general of State consented to the decree. X represents that X will return excess amounts to Trust consistent with the decree and the treatment of Trust as a CRUT beginning D1.

#### RULING 1

Section 664(d)(2) defines a CRUT for the purposes of § 664 as a trust (A) from which a fixed percentage (which is not less than 5 percent nor more than 50 percent) of the net fair market value of its assets, valued annually, 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)(2)(A) and other than qualified gratuitous transfers described in § 664(d)(2)(C) may be paid to or for the life or lives of such individual or individuals, (C) following the termination of the payments described in § 664(d)(2)(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 gratuitous transfer (as defined by § 664(g)), and (D) with respect to each contribution of property to the trust, the value (determined under § 7520) of such remainder interest in such property is at least 10 percent of the net fair market value of such property as of the date such property is contributed to the trust.

Section 1.664-3(a)(4) of the Income Tax Regulations provides that no amount other than the unitrust amount may be paid to or for the use of any person other than an organization described in § 170(c). The CRUT 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).

Based solely on the facts and representations submitted, we conclude that the decree of Court, correcting the scrivener's error by reducing the unitrust amount from 7 percent to 5 percent retroactive to D1, does not cause Trust to fail to qualify as a CRUT described in § 664(d)(2).

## RULING 2

Section 4941 imposes excise tax on any act of self-dealing between a private foundation and any of its disqualified persons defined in § 4946.

Section 4941(d)(1)(E) provides that an act of self-dealing includes any transfer to, or use by or for the benefit of, a disqualified person, of any of the income or assets of a private foundation. However, § 4941 does not prohibit a disqualified person's cash or donations going for no consideration to such person's private foundation.

Section 53.4941(d)-2(f)(2) of the Foundation and Similar Excise Tax Regulations provides that an incidental or tenuous benefit to a disqualified person does not constitute an act of self-dealing.

Section 4947(a)(2) describes split-interest trusts as those that are not exempt from federal income tax under § 501(a), not all of the unexpired interests in which are devoted to purposes in § 107(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.

Section 4947(a)(2) provides, in pertinent part, that § 4941 shall apply as if such split-interest trusts were private foundations under § 509(a).

Section 4947(a)(2)(A) provides, in pertinent part, that the provisions of § 4947(a)(2) do not apply with respect to the amounts payable under the terms of such split-interest trust to its income beneficiaries.

Section 53.4947-1(c)(2) and § 53.4947-1(c)(2)(ii), Example (1), of the Foundation and Similar Excise Tax Regulations indicate, in pertinent part, that the payments of income by a charitable remainder unitrust to its individual income beneficiaries do not result in any tax on self-dealing under § 4941.

Under § 4947(a)(2)(A) and § 53.4947-1(c)(2)(ii), Example (1), of the regulations, a charitable remainder unitrust's payments to its income beneficiary do not result in any tax on self-dealing under § 4941. A retroactive amendment in favor of the charitable remainder beneficiary, under the circumstances described, including the return of the cash difference to the unitrust, does not constitute self-dealing under § 4941. Any potential increased charitable contribution deduction to the donor income beneficiary resulting from the decree of Court and X's subsequent repayment of the excess amounts received to Trust will be an incidental and tenuous benefit under § 53.4941(d)-2(f)(2) of the regulations

Accordingly, we rule that the decree correcting the scrivener's error in Trust to reduce its income percentage, and X's return (and earlier receipt) of the cash difference in income, for the period beginning D1, will not be acts of self-dealing under

§ 4941(d)(1)(E) or the regulations thereunder with respect to X or any other disqualified persons under § 4946.

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, we do not express or imply any opinion regarding whether Trust otherwise qualifies as a CRUT under § 664(d)(2).

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 the authorized representative of Trust.

Sincerely,

J. THOMAS HINES  
Chief, Branch 2  
(Passthroughs & Special Industries)

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