

Internal Revenue Service

Department of the Treasury

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Date:

August 8, 2000

Trust =

X =

A =

B =

D1 =

D2 =

D3 =

D4 =

D5 =

Court =

a =

b =

Dear :

This letter responds to a letter dated February 3, 2000, and subsequent correspondence submitted by an authorized representative of Trust on behalf of Trust, requesting a ruling with respect to the proposed division of Trust into two separate trusts.

The information submitted states that A and B, then husband and wife, established Trust on D1. A and B are trustors and co-

trustees of Trust. Trust provides that the trustors desire to establish a charitable remainder unitrust (CRUT) within the meaning of § 6 of Rev. Proc. 90-31, 1990-1 C.B. 539, 542, and § 664(d)(2) and 664(d)(3) of the Internal Revenue Code. Paragraph 2.1 of Trust provides that Trust is irrevocable and cannot be amended, except as provided in Paragraphs 3.3 and 7.6 (concerning distribution to remaindermen and conformity with § 664(d) of the Code, respectively). A and B have funded Trust with various property, including shares of X.

Section 3 of Trust provides for distributions of Trust principal and income.

Paragraph 3.1 provides that, during the lifetimes of A and B, the trustee shall pay to A and B jointly, in each taxable year of the trust, the unitrust amount computed as provided in Section 4.

Paragraph 3.2 provides that, upon the death of A or B, the trustee shall pay to the survivor of A and B, in each taxable year of the trust, the unitrust amount computed as provided in Section 4.

Paragraph 3.3 provides, in general, that upon the death of the survivor of A and B, the trustee shall distribute all of the then principal and income of the trust estate, other than any amount due to a unitrust recipient, to certain named charities, or to such additional or replacement beneficiaries as designated by A or B, or the survivor of A and B, in a dated written instrument. The named charities and any additional or replacement beneficiaries shall be organizations described in §§ 170(b)(1)(A), 170(c), 2055(a), and 2522(a) of the Code.

Section 4 of Trust provides that the unitrust amount required to be distributed under Section 3 shall be computed as provided in Section 4.

Paragraph 4.1 provides that the basic unitrust amount shall be ten percent of the net fair market of the trust assets valued as of the first business day of the trust's taxable year. Except as otherwise provided in Section 4, the unitrust amount shall be the basic unitrust amount as defined in Paragraph 4.1.

Paragraph 4.2 provides that if the basic unitrust amount is greater than the amount of trust income (as defined in § 643(b) of the Code and the regulations thereunder) for the trust's taxable year, the unitrust amount shall be limited to the amount of the trust income.

Paragraph 4.3 provides that if the amount of trust income (as defined in § 643(b) of the Code and the regulations thereunder) for the trust's taxable year exceeds the basic unitrust amount, the unitrust amount shall include such excess income to the extent that the aggregate of the unitrust amounts paid to the unitrust recipient in prior taxable years of the trust is less than the aggregate of the basic unitrust amounts for such years.

Subsequent to the establishment of Trust, A and B became legally separated and commenced divorce proceedings in Court. As part of the proceedings, on D2, Court issued a judgment ordering A and B to join in a petition to divide Trust into two separate trusts, with A as sole trustee of the separate trust for A's benefit and B as sole trustee of the separate trust for B's benefit. On D3, Court issued a supplemental judgment ordering the division of Trust property between the two separate trusts. The stock of X is to be divided evenly between the two trusts, but the remainder of the trust corpus is to be divided into an a percent share for A's trust and a b percent share for B's trust. On D4, Court also issued a judgment ordering each of A and B to be named successor trustee for the other in the event of the other's death, and providing that, if one of them predeceases the other, as to that person's respective trust, the other shall be the continuing life beneficiary.

On D5, Court additionally issued an order authorizing the conversion of Trust from a charitable remainder unitrust with a net income makeup method of payment to a charitable remainder unitrust with a standard fixed percentage method of payment. Such Court order also modified certain other provisions of Trust not relevant to this ruling request. The provisions of this order are not the subject of this ruling request.

A and B represent that Trust, as modified by the D5 Court order, meets all of the qualifications and requirements of § 664. A and B further represent that all of the other provisions and requirements of the two separate trusts will be identical to those of Trust, as modified by the D5 Court order. The unitrust amount for each separate trust will remain at ten percent of the net fair market value of the property of the respective separate trust.

Section 664(d)(2) of the Code sets forth the requirements to be a charitable remainder unitrust. Section 664(d)(2)(A) provides that a fixed percentage (which is not less than 5 percent nor more than 50 percent) of the net fair market value of the assets, valued annually, is to be paid, not less often than annually, to one or more persons (at least one of whom 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. No amount other than the above-described payments may be paid to or for the use of any person other than an organization described in § 170(c). Following the termination of the payments described above, the remainder interest in the trust generally is to be transferred to, or for the use of, an organization described in § 170(c). With respect to each contribution of property to the trust, the value of the remainder interest in such property must be at least 10 percent of the net fair market value of such property as of the date such property is contributed to the trust.

Based solely on the facts and representations submitted, we conclude that the division of Trust into two separate trusts will not cause Trust or the two separate trusts to fail to qualify as charitable remainder trusts under § 664.

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, in particular, §§ 61, 170, 1001, and 1041. We express no opinion on whether Trust qualifies as a charitable remainder trust under § 664 or whether the separate trusts each will qualify as charitable remainder trusts under § 664.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code 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 forwarded to A, B, and Trust's other authorized representative.

Sincerely yours,

H. GRACE KIM
Assistant to the Chief
Branch 2
Office of the Associate
Chief Counsel
(Passthroughs and
Special Industries)

Enclosures: 2
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