

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact:

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Telephone Number:

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Date:

September 30, 2005

Trust =

EIN:

A =

SSN:

B =

SSN:

Trustees =

D1 =

D2 =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Court =

X =

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

This letter responds to a letter dated December 8, 2004, and subsequent correspondence, submitted by Trust's authorized representative on behalf of Trustees and Trust, requesting rulings under §§ 664, 170, and 4941 of the Internal Revenue Code on the qualification of Trust as a charitable remainder unitrust (CRUT).

The information submitted states that on D1, A and B created Trust with the intention that Trust qualify as a fixed percentage CRUT under § 664(d)(2). Trustees are the trustees of Trust. A and B established Trust with the assistance of an attorney. However, due to a drafting error, Trust was drafted inadvertently as a net income makeup charitable remainder trust (NIMCRUT) rather than as a CRUT.

The introductory paragraph of Trust describes a fixed percentage CRUT. However, Trust provides that the unitrust amount payable to A and B during their lifetimes is the lesser of (1) Trust income during the taxable year, as defined in § 643(b), and, (b) x% of the fair market value of the assets of Trust valued as of the first day of each taxable year of Trust.

In order to correct the scrivener's error, and because Trust is irrevocable, Trustees sought an order from Court authorizing an amendment *ab initio* of Trust. No parties objected to the proposed reformation. On D2, Court issued an order reforming Trust to a fixed percentage CRUT, *ab initio*, subject to the Service issuing a Private Letter Ruling that the reformation of Trust will not disqualify Trust as a charitable remainder trust.

Trustees will file amended tax returns on behalf of Trust for Year 1, Year 2, and Year 3, treating Trust as a CRUT, rather than as a NIMCRUT. In Year 4, Trustees will include the appropriate amounts that should have been distributed to A and B in the prior years under § 662(d)(2) in the distribution to A and B.

Section 664(d)(2) provides that for purposes of § 664, a charitable remainder unitrust is a trust (A) from which a fixed percent (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) 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 of 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 use of any person other than an organization described in § 170(c), (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 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 664(d)(3) provides that notwithstanding the provisions of §§ 664(d)(2)(A) and (B), the trust instrument may provide that the trustee shall pay the income beneficiary for any year (A) the amount of the trust income, if such amount is less than the amount required to be distributed under § 664(d)(2)(A), and (B) any amount of the trust income which is in excess of the amount required to be distributed under § 664(d)(2)(A), to the extent that the aggregate of the amounts paid in prior years was less than the aggregate of such required amounts.

Section 1.664-3(a)(4) of the Income Tax Regulations provides that 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).

Section 170(a) provides for a deduction for charitable contributions. Section 170(f)(2)(A), however, does not allow a charitable deduction for a remainder interest in property transferred to a trust unless the trust is a charitable remainder annuity trust or a charitable remainder unitrust (described in § 664), or a pooled income fund (described in § 642(c)(5)).

Section 4941(a)(1) imposes an excise tax on each act of self-dealing between a disqualified person and a private foundation. Section 4941(d)(1)(E) defines the term “self-dealing” as any direct or indirect transfer to, or the use by or for the benefit of, a disqualified person of the income or assets of a private foundation. Section 4946(a) defines the term “disqualified person” with respect to a private foundation as including a substantial contributor to the foundation (including the creator of a trust).

Section 4947(a)(2) provides generally that split-interest trusts are subject to the provisions of section 4941 in the same manner as if such trusts were private foundations, but, under section 4947(a)(2)(A), not with respect to any amounts payable under the terms of such trust to income beneficiaries, unless a deduction were allowed under sections 170(f)(2)(B), 2055(e)(2)(B), or 2522(e)(2)(B).

Based solely on the information submitted and representations made, we conclude that the judicial reformation of Trust, *ab initio*, does not violate § 664. Furthermore, assuming that the terms of the reformed Trust are otherwise valid under § 664, the reformed Trust will be treated as a valid CRUT under 664(d)(2), *ab initio*. Because Trust, as reformed, qualifies as a CRUT effective D1, transfers to Trust from its inception may qualify as charitable contributions under § 170 to the extent of the value of the remainder interests of the charitable beneficiaries. Additionally, we

conclude that the judicial reformation of Trust will not be an act of self-dealing under § 4941.

Except as specifically set forth above, no opinion is expressed as to the federal tax consequences of the above described facts under any other provision of the Code. Specifically, no opinion is expressed concerning whether Trust is or was a charitable remainder trust within the meaning of § 664.

This ruling is directed only to the taxpayer on whose behalf it was requested. 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, a copy of this letter is being sent to Trust's authorized representative.

Sincerely,

J. Thomas Hines  
Chief, Branch 2  
Office of Associate Chief Counsel  
(Passthroughs & Special Industries)

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