



Section 1.1 of Trust states in part the following.

In each taxable year of the Trust, the Trustee shall pay to A and B in equal shares during their lifetimes, a unitrust amount equal to the lesser of: (a) the Trust income for the taxable year, as defined in § 643(b) of the Code and the regulations thereunder and (b) a percent of the net fair market value of the assets of the Trust valued as of the first day of each taxable year of the Trust. The unitrust amount for any year shall also include any amount of Trust income for such year that is in excess of the amount required to be distributed under (b), above, to the extent that the aggregate of the amounts paid in prior years was less than the aggregate of the amounts computed as a percent of the net fair market value of the Trust assets on the valuation dates.

On D2, A and B, as the trustees of Trust, filed a petition with Court to reform Trust. On D3, Court issued an order reforming Trust, subject to the Internal Revenue Service issuing a private letter ruling that the reformation of Trust would not disqualify Trust as a charitable remainder trust.

A and B, in their petition to Court and also in this ruling request, have advanced two arguments for the reformation. A and B argue that the attorney who drafted the trust agreement failed to provide and discuss the availability and advantages of creating a charitable remainder unitrust (CRUT) as opposed to a NIMCRUT. They claim that if they had been presented with the alternative, they would likely have opted for a CRUT rather than a NIMCRUT. In addition, A and B argue that the changes in the investment climate, especially the reduction in the interest rates in recent years, frustrate Trust's purpose of providing a suitable annual income stream to them.

A and B, the trustees of Trust request the following rulings.

The modification of Trust as set forth in the Court order granting petition for modification of trust due to changed circumstances, including the changed form from a NIMCRUT to a standard charitable remainder trust, would not adversely affect the Trust's qualification as a CRUT under § 664.

### Law and Analysis

Section 664(d)(2) provides that for purposes of § 664, a charitable remainder unitrust is 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 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)(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 employee 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) 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 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 (by reason of § 664(d)(3)(A)) 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 in part that [a charitable remainder 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).

A modification or reformation of a charitable remainder trust does not violate § 664 if the modification or reformation corrects a scrivener's error.

Based on the information submitted and representations made, we conclude that the judicial reformation of Trust was not due to a scrivener's error and would violate § 664 and, consequently, the reformed Trust will not be treated as a charitable remainder trust.

Except as specifically set forth above, no opinion is expressed as to the federal tax consequences of the above facts under any other provisions of the Code.

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 in file with this office, a copy of this letter is being sent to Trust's authorized representative.

Sincerely,

David R. Haglund  
Senior Technician Reviewer, Branch 1  
Office of Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy of § 6110 purposes

cc: