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Department of the Treasury  
Washington, DC 20224

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

Telephone Number:

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Date:  
April 26, 2007

Trust =

A =

B =

Charity =

Court =

D1 =

D2 =

D3 =

D4 =

a =

b =

c =

d =

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

This responds to a letter dated September 9, 2005, and subsequent correspondence submitted on behalf of Trust by its authorized representatives, requesting rulings under §§ 664, 507, 1001, and 4941 of the Internal Revenue Code.

The information submitted states that A and B, a married couple (collectively, Grantors), created Trust, a charitable remainder unitrust (CRUT), on D1 and are entitled to receive payment of the unitrust amount under the trust instrument. The trust instrument provides that the trustee will pay to the recipients 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) and the regulations thereunder, or (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 valuation date). The payment of the unitrust amount shall also include any amount of trust income for the year that is in excess of the amount required 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 at a% percent of the net fair market value of the trust assets.

The payments will be made until the death of the survivor of the Grantors. Upon the death of the survivor Grantor, the trustee shall distribute all of the principal and income of Trust (other than any amount due either of Grantors or their respective estates as provided) to Charity, a public charity.

The trustee proposes to terminate Trust early and to distribute all trust property to Grantors and Charity by obtaining an order from Court (contingent on the issuance of a favorable private letter ruling from the Service). Under the proposed termination plan, it is represented that Grantors will assign their interests in Trust to Charity. In exchange for Grantors' assignment of their interests in Trust, the trustee will make a one-time lump sum distribution equal to the present value of their right to receive unitrust or income payments for life. Any assets distributed in-kind will be distributed on a pro-rata basis among Grantors and Charity.

A's date of birth is D2 and A is aware of no physical condition that would decrease A's normal life expectancy. A's personal physician submitted a statement confirming that there was no indication that A's life expectancy was less than would otherwise be expected for a person A's age. B's date of birth is D2 and B is aware of no physical condition that would decrease B's normal life expectancy. B's personal physician submitted a statement confirming that there was no indication that B's life expectancy was less than would otherwise be expected for a person B's age.

## 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 664(d)(3) provides that, notwithstanding the provisions of §§ 664(d)(2)(A) and (B), the trust instrument of a CRUT 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.

Based solely on the facts and representations submitted, we conclude that the early termination of Trust pursuant to Court order will not cause Trust to be disqualified as a CRUT under § 664. This ruling is conditioned on Grantors and Trust treating the early termination as described in rulings 2 through 4, below.

#### RULINGS 2 & 3

Section 507(c) imposes a tax on a private foundation under certain circumstances.

Section 507(d)(2)(A) defines the term “substantial contributor” to include, in the case of a trust, the creator of the trust.

Section 664(c)(1) generally exempts CRUTs, as defined in §§ 664(d)(2) and (3) above, from income tax.

Section 4941(a)(1) imposes an excise tax on disqualified persons for each act of self-dealing between a disqualified person and a private foundation.

Section 4941(d)(1) defines self-dealing as including any direct or indirect sale or exchange, or leasing of property between a private foundation and a disqualified person, or transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a private foundation.

Section 4946(a)(1) provides that for purposes of subchapter A of chapter 42 of subtitle D of title 26, the term “disqualified person” includes, with respect to a private foundation, a person who is a substantial contributor to the foundation, or a foundation manager (within the meaning of § 4946(b)(1)).

Section 4946(a)(2) provides that for purposes of § 4946(a)(1), the term “substantial contributor” means a person who is described in § 507(d)(2).

Section 4946(b) provides that for purposes of subchapter A of chapter 42 of subtitle D of title 26 the term “foundation manager” means, with respect to any private foundation: (1) an officer, director, or trustee of a foundation (or an individual having powers or responsibilities similar to those of officers, directors, or trustees of the foundation, and (2) with respect to any act (or failure to act), the employees of the foundation having authority or responsibility with respect to such act (or failure to act).

Section 4947(a)(2) provides, in pertinent part, that in the case of a trust which is not exempt from tax under § 501(a), not all of the unexpired interests of which are devoted to charitable purposes, and which has amounts in trust for which a charitable deduction was allowed, §§ 507 and 4941 apply as if such trust were a private foundation.

Section 4947(a)(2)(A) provides that § 4947(a)(2) shall not apply with respect to any amounts payable under the terms of such trust to non-charitable income beneficiaries..

Section 53.4947-1(c)(2)(ii) of the Foundation and Similar Excise Taxes Regulations provides, in essence, that payments of income by a CRUT to its individual income beneficiaries do not result in any tax on self-dealing under § 4947.

Section 1.7520-3(b)(1)(ii) of the Income Tax Regulations provides that the standard § 7520 annuity, life estate, or remainder factor may not be used to value a restricted beneficial interest. However, a special factor may be used to value a restricted beneficial interest in some circumstances. Section 1.7520-3(b)(1)(i)(C) provides that the standard factor for an ordinary remainder interest represents the present worth of the right to receive \$1.00 at the end of a defined period. Section 1.7520-3(b)(1)(i)(B) provides that the standard factor for an ordinary life estate interest represents the right to receive the use of \$1.00 for a defined period.

Trust is a split-interest trust described in § 4947(a)(2). By being described in § 4947(a)(2), Trust is subject to the provisions of §§ 507 and 4941 and certain other provisions, as if it were a private foundation.

Grantors are disqualified persons with respect to the trust within the meaning of § 4946(a)(1)(A) because they are the creators of the trust. Section 507(d)(2) defines the term “substantial contributor” to include the creator of the trust. However, the grantors are not disqualified persons with respect to Charity, a public charity, because § 4941 applies to certain transactions between private foundations and disqualified persons.

By early termination, Trust will distribute lump sums to Grantors and Charity equal to the actuarial value of their interests in Trust (taking into account the net-income

provisions of Trust), and the distributions are also treated as a constructive sale or exchange between Grantors and Charity.

Generally, payments to Grantors from Trust would constitute self-dealing. However, because the distribution to Grantors equals the actuarial value of the income interest, taking into account the net-income provisions of the trust, the exception to self-dealing provided by § 53.4947-1(c)(2)(i) applies and the distribution will not be an act of self-dealing. Furthermore, because Charity is a public charity, § 4941 does not apply to the transaction between Grantors and Charity.

The appropriate calculation of the actuarial value of the income interest of Trust, taking into account the net-income provisions of Trust, requires the use of a reasonable method for the calculation which does not inappropriately inflate Grantors' interest to the detriment of the charitable remainderman.

One reasonable method to calculate the actuarial value of the income and remainder interests is the following: the computation of the remainder interest is found using a special factor as indicated in § 1.7520-3(b)(1)(ii). The special remainder factor is found by using the methodology stated in § 1.664-4 for computing the factor for a remainder interest in a unitrust, with the following modification: where § 1.664-4(a)(3) provides an assumption that the trust's stated payout percentage is to be paid out each year, instead the assumed payout shall be that of a fixed percentage which is equal to the lesser of the trust's stated payout percentage or the § 7520 rate for the month of termination. The special factor for the non-charitable payout interest is 1 minus the special remainder factor.

Based on this methodology, the calculation of Grantors' income interest in Trust may be demonstrated as follows: the § 7520 rate for D4 is b percent. Assuming the termination occurred in D4, the lesser of this rate and Trust's stated payout percentage is b percent. The assumed Grantors' ages as of the nearest birthdays are c and d. Based on Table 90CM, interest at b percent, an unadjusted payout rate of b percent, and quarterly payments made at the end of each quarter, the present value of the remainder interest in a unitrust which falls in at the death of the last of two persons aged c and d is \$0.09427 for each \$1.00 of the trust estate. The present value of the payout interest in the same unitrust until such death is \$1.00 minus \$0.09427, or \$0.90573 for each \$1.00 of the trust estate.

In this case, the income beneficiaries are not expected to receive more than they would during the full term of the trust under the above-described methodology for valuing their interest in a CRUT with a net income make-up feature. Further, state law allows for early termination under the facts presented pursuant to the Court order.

In addition, Grantors' personal physician has conducted a physical examination on each of them and has stated under penalties of perjury that the examination reveals no

medical condition expected to result in a shorter-than-average longevity (under § 1.72-9); and Grantors have each signed a similar statement.

Furthermore, because the effect of the transaction is to vest the income interest and remainder interest in the remainder beneficiary, Charity, the trust no longer will be a split-interest trust under § 4947(a)(2) and § 507 will not apply.

Accordingly, we hold as follows: neither the distribution to Grantors of the unitrust termination amount, the final distribution of trust assets to Charity, Grantors' consent to trust termination, nor Charity's consent to Trust termination constitute acts of direct or indirect self-dealing under §§ 4941 and 4947. We further hold that the Court-approved termination of Trust, and related lump-sum distribution to Grantors of the unitrust termination amount and final distribution of remaining Trust assets to Charity, will not constitute a taxable termination under §§ 507 and 4947.

#### RULING 4

Section 1001(a) provides that the gain from the sale or other disposition of property is the excess of the amount realized therefrom over the adjusted basis provided in § 1011 for determining gain, and the loss shall be the excess of the adjusted basis provided in such section for determining loss over the amount realized. Under § 1001(b), the amount realized from the sale or other disposition of property is the sum of any money received plus the fair market value of the property (other than money) received.

Section 1001(e)(1), however, provides that in determining gain or loss from the sale or disposition of a term interest in property, that portion of the adjusted basis of the interest which is determined pursuant to §1015 (to the extent that the adjusted basis is a portion of the entire adjusted basis of the property) shall be disregarded. Under § 1001(e)(2), a "term interest in property" includes an income interest in a trust. Section 1001(e)(1) does not apply to a sale or other disposition that is a part of a transaction in which the entire interest in property is transferred to any person or persons. See § 1001(e)(3) and § 1.1001-1(f).

Section 1222(3) provides that the term "long-term capital gain" means gain from the sale or exchange of a capital asset held for more than one year.

Section 1221(a) defines the term "capital asset" as property held by the taxpayer with certain listed exceptions not applicable here.

Section 1223(2) provides that in determining the period for which a taxpayer has held property however acquired there shall be included the period for which the property was held by any other person, if the property has the same basis in the taxpayer's hands as it would have in the hands of that other person.

Rev. Rul. 72-243, 1972-1 C.B. 233, provides that the proceeds received by the life tenant of a trust, in consideration for the transfer of the life tenant's entire interest in the trust to the holder of the remainder interest, are treated as an amount realized from the sale or exchange of a capital asset under § 1222. The right to income for life from a trust estate is a right in the estate itself. See McAllister v. Commissioner, 157 F.2d 235 (2d Cir. 1946), *cert. denied*, 330 U.S. 826 (1947).

In the present case, although the proposed transaction takes the form of a distribution of the present values of the respective interests of Grantors and Charity, in substance it is a sale of Grantors' interest to Charity, the remainder interest holder. The amount received by Grantors as a result of the termination of Trust is an amount realized from the sale or exchange of a capital asset. Rev. Rul. 72-243. If, as represented by Grantors, Grantors' basis in the unitrust income interest is a portion of the entire basis of the property as determined under §1015(b), Grantors' adjusted basis in their interest is disregarded under §1001(e) because the disposition is not part of a transaction in which the entire interest in Trust is transferred to a third party. Consequently, if Grantors' adjusted basis is disregarded under § 1001(e), the entire amount realized by Grantors as a result of the early termination of Trust will be gain to Grantors. Moreover, because Grantors' holding period in the life interest exceeds one year, under § 1222(3), the gain recognized by Grantors as a result of the early termination of Trust will be long-term capital gain.

Except as specifically ruled above, we express no opinion concerning the federal tax consequences of the transactions described above under any other provisions of the Code. Specifically, no opinion is expressed as to whether Trust otherwise qualifies as a charitable remainder unitrust under § 664.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file, copies of this letter are being sent to Trust's authorized representatives.

Sincerely,

J. THOMAS HINES  
Chief, Branch 2  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures: 2  
Copy of this letter  
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