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Person To Contact:
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PLR-144843-07

Date: APRIL 15, 2008

In Re:

LEGEND:

Husband	=
Wife	=
Trust	=
Trust A	=
Trust B	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
Date 6	=
State	=

Dear :

This is in response to your September 28, 2007 letter and other correspondence requesting a ruling regarding the income, gift, and estate tax consequences of the proposed transfer of Wife's income interest in Trust A to the charitable remainder beneficiaries.

The facts submitted are as follows:

Husband and Wife, residents of State, a community property state, created Trust, pursuant to a trust indenture on Date 3, a date prior to the effective date of the Tax Reform Act of 1969. Trust has since been subject to various amendments, supplements, and clarifications. Husband was born on Date 1, and Wife was born on Date 2. Husband was older than Wife.

The trust indenture establishing Trust provided that all of the income of Trust was to be distributed by the trustees to Husband and Wife for their joint lives and the life of the survivor. Upon the death of the survivor, the trustees were directed to distribute the then remaining balance of the trust to such charitable organizations and in such proportions as Husband and Wife had designated in writing.

Although the trust indenture was specifically stated to be irrevocable, Husband and Wife reserved the right to amend the trust, by agreement signed by Husband and Wife or the survivor. However, none of the principal could be returned to or paid to the settlors or to or for the benefit of their issue. Finally, no amendment could alter, amend, or revoke the distribution of the remainder of the trust to charitable organizations as provided in the trust indenture. The trust indenture also reserves a right in the survivor of Husband and Wife to designate the charitable beneficiaries of the Trust and to alter, amend, or revoke a charitable beneficiary designation at any time.

On Date 4, an amendment to the trust indenture divided Trust into Trust A, consisting of all property transferred to Trust before July 31, 1969, and Trust B consisting of all property transferred to Trust on or after July 31, 1969. Trust A continued the dispositive provisions of the original Trust, and Trust B was reformed into a charitable remainder unitrust as defined in § 664(d)(2) of the Internal Revenue Code. Husband died on Date 5, and Wife is currently the sole income beneficiary of Trust A.

It is represented that the only contributions that have been made to Trust A were those that were made before May 27, 1969. Following the division of Trust into Trust A and Trust B, Trust A and Trust B were administered and accounted for as entirely separate trusts.

Wife proposes to transfer her income interest to the designated charitable beneficiaries as finally determined in proportion to each remainder beneficiary's interest in Trust A corpus on termination of the trust. It is represented that under applicable State law, as a result of Wife's assignment, Trust A will terminate and the trust corpus will be distributed to the trust charitable remainder beneficiaries as provided under Wife's beneficiary designation. It is represented that the designated charitable remainder beneficiaries of Trust A will be limited exclusively to those organizations satisfying the standards and definitions described in §§ 170(b)(1)(A), 170(c), 2055(a) and 2522(a).

You have requested the following rulings:

1. Wife's gift of her entire income interest in Trust A to the designated charitable beneficiaries of Trust A will qualify for a gift tax deduction under § 2522 equal to the value of her entire income interest in Trust A.

2. Should Wife die within three years of the transfer of her entire income interest in Trust A to the designated charitable beneficiaries, her estate will qualify for an estate tax deduction under § 2055 equal to the amount included in her gross estate.

3. Wife's gift of her entire income interest in Trust A to the designated charitable beneficiaries of Trust A will qualify for an income tax deduction under § 170(a)(1).

4. Trust A is not subject to the provisions of §§ 507 and 4941 as if it were a private foundation because the assets of Trust A were transferred in trust before May 27, 1969.

LAW AND ANALYSIS

Ruling 1

Section 2501 provides that a tax is imposed on the transfer of property by gift by any individual.

Section 2511(a) provides, in part, that the tax imposed by § 2501 shall apply whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible.

Section 2522(a) provides that in computing taxable gifts for the calendar year, there shall be allowed as a deduction the amount of all gifts made during such year to or for the use of charitable organizations described in § 2522(a). However, under § 2522(c)(2) and § 25.2522(c)-3(c)(1) and (2) of the Gift Tax Regulations, where a donor transfers an interest in property (other than an interest described in § 170(f)(3)(B)) to a person, or for a use described in § 2522(a) or (b) and an interest in the same property is retained by the donor, is transferred, or has been transferred (for less than an adequate and full consideration in money or money's worth) from the donor to a person, or for a use, not described in § 2522(a) or (b), no deduction is allowed for the interest that is or has been transferred to the person, or for the use, described in § 2522(a) or (b), unless the charitable interest is: (A) an undivided portion (not in trust) of the donor's entire interest; (B) a remainder interest (not in trust) in a personal residence or in a farm; (C) a qualified conservation contribution; (D) a remainder interest in a charitable remainder annuity trust or a charitable remainder unitrust (described in § 664) or a pooled income fund (described in § 642(c)(5)); or (E) a guaranteed annuity interest or a unitrust interest.

In Situation 1 of Rev. Rul. 86-60, 1986-1 C.B. 302, in 1980, A created a charitable remainder annuity trust (CRAT) described in § 664(d)(1) of the Code, retaining an annuity interest in the CRAT for life. In 1984, A transfers A's annuity interest to X, the charitable remainder beneficiary of the CRAT, that is an organization

described in § 170(c). Following the transfer, A did not retain any interest in the trust, and neither at that time nor at any prior time did A make a transfer from the trust for private purposes. Although the creation of the trust and the transfer of the remainder interest to charity divided the A's prior interest, the transfer was for charitable, not private interests. Consequently, A's transfer of the annuity interest to charity was not required to be in a form described in § 2522(c)(2)(B) and § 25.2522(c)-3(c)(2) in order to qualify for the charitable deduction. Accordingly, A's transfer of the annuity interest to charity qualifies for a deduction under § 2522(a).

In Situation 2 of Rev. Rul. 86-60, supra, A created a CRAT, retaining the annuity interest for life. Upon A's death, the annuity interest was to be paid to B, and upon the death of the survivor of A and B, the remainder would pass to X, a qualified charitable organization. A and B subsequently assigned their interests to the charitable remainder beneficiary. The ruling concludes that A made a completed gift under § 2511 of the Code to B of the secondary life annuity interest in the trust in 1980. Because A made a completed gift in the trust to a noncharitable beneficiary, the restrictions in § 2522(c)(2) apply. Thus, in Situation 2, no gift tax deduction is allowed for A's 1984 transfer to X of A's life interest in the trust unless it is described in § 25.2522(c)-3(c)(2) of the regulations. The ruling further concludes that B's transfer to the charitable remainder beneficiary qualifies for the gift tax charitable deduction under § 2522 because, following the transfer, B did not retain any interest in the trust and, at no time, had B made a transfer of an interest in the trust for a private purpose. Consequently, as was the case in Situation 1, B's transfer of the annuity interest to charity was not required to be in a form described in § 2522(c)(2)(B) and § 25.2522(c)-3(c)(2) in order to qualify for the charitable deduction.

In the present case, with respect to the portion of Trust A attributable to Husband's transfer to Trust A, Wife's only interest in that portion of Trust A has been that of a successor beneficiary of the income interest on Husband's death. Wife has never had any other interest in that portion of Trust A, and at no time has Wife made a transfer of an interest in that portion of Trust A property for a private purpose. Accordingly, as is the case in Situation 2 of Rev. Rul. 86-60, Wife's proposed transfer of her income interest attributable to assets Husband transferred to Trust A to the charitable remainder beneficiaries is not required to be in a form described in § 2522(c)(2)(B) and § 25.2522(c)-3(c)(2) in order to qualify for the charitable deduction.

Further, based on the facts presented, the situation presented with respect to the portion of Trust A attributable to Wife's contributions is similar to Situation 1 of Rev. Rul. 86-60. As is the case in Situation 1 of Rev. Rul. 86-60, Wife's proposed transfer to the charitable remainder beneficiaries of her income interest attributable to the assets that she transferred to Trust A is not required to be in a form described in § 2522(c)(2)(B) and § 25.2522(c)-3(c)(2) in order to qualify for the charitable deduction.

Accordingly, based on the facts presented and the representations made, we conclude that Wife's transfer of her entire income interest in Trust A to the designated

charitable beneficiaries of Trust A will qualify for a gift tax deduction under § 2522(a) equal to the value of her entire income interest in Trust A.

Ruling 2

Section 2033 provides that the value of the gross estate shall include the value of all property to the extent of the interest therein of the decedent at the time of his/her death.

Under § 2035(a), if the decedent made a transfer (by trust or otherwise) of an interest in property, or relinquished a power with respect to any property, during the 3-year period ending on the date of decedent's death, and the value of such property (or an interest therein) would have been included in the decedent's gross estate under §§ 2036, 2037, 2038, or 2042 if such transferred interest or relinquished power had been retained by the decedent on the date of death, then the value of the gross estate shall include the value of any property (or interest therein) which would have been so included.

Section 2036(a) provides that the value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, under which the decedent has retained for life or for any period not ascertainable without reference to the decedent's death or for any period which does not in fact end before the decedent's death --

> (1) the possession or enjoyment of, or the right to the income from, the property, or
>
> (2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom.

Under § 2055(a)(2), for estate tax purposes, the value of the taxable estate shall be determined by deducting from the value of the gross estate the amount of all bequests, legacies, devises, or transfers to or for the use of any corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes.

In this case, as described above, Wife transferred property to Trust A and retained a right to receive the income from the transferred property for her life. Thus, a portion of the Trust A corpus would be subject to inclusion in Wife's gross estate under § 2036, if she retains the income interest until her death. (See also, § 2038 regarding Wife's retained power to designate charitable remainder beneficiaries.) If Wife dies

during the three year period beginning on the date of the transfer of her income interest in Trust A, § 2035 would require the inclusion of Trust A in her gross estate to the extent Wife is the transferor of the corpus. However, as a result of Wife's transfer of her entire income interest in Trust A to the charitable beneficiaries, the Trust A corpus is passing to charities described in § 2055. Accordingly, based on the facts presented and the representations made, we conclude that if Wife dies within three years of the transfer of her entire income interest in Trust A to the designated charitable beneficiaries, her estate will qualify for an estate tax deduction under § 2055 equal to the amount of Trust A corpus included in her gross estate.

Ruling 3

Section 170(a)(1) provides that there shall be allowed as a deduction any charitable contribution (as described in § 170(c)) payment of which is made within the taxable year.

Section 170(c)(2) provides that the term "charitable contribution" means a contribution or gift to or for the use of, as pertinent here, a corporation, trust, or community chest, fund, or foundation:

(1) created or organized in the United States, or in any possession thereof, or under the law of the United States, any State, the District of Columbia, or any possession of the United States;

(2) organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes . . . ;

(3) no part of the net earnings of which inures to the benefit of any private shareholder or individual; and

(4) which is not disqualified for a tax exemption under § 501(c)(3) of the Code by reason of attempting to influence legislation, and which does not participate in, or intervene in, any political campaign on behalf of (or in opposition to) any candidate for public office.

Section 170(f)(2) provides that no deduction is allowed under § 170 for the value of any interest in property (other than a remainder interest) transferred in trust unless the interest is in the form of a guaranteed annuity or the trust instrument specifies that the interest is a fixed percentage distributed yearly of the fair market value of the trust property (to be determined yearly) and the grantor is treated as the owner of such interest for purposes of applying § 671.

Section 170(f)(3)(A) provides that a contribution (not made by a transfer in trust) of less than the taxpayer's entire interest in property is not allowed as a charitable

contribution deduction except to the extent such contribution would have been allowed as a deduction had it been transferred in trust.

Section 170(f)(3)(B)(ii) provides that § 170(f)(3)(A) does not apply to a contribution of an undivided portion of the taxpayer's entire interest in property.

Sections 1.170A-6(a)(2) and 1.170A-7(a)(2)(i) of the Income Tax Regulations provide that a deduction is allowed for a contribution of a partial interest in property if such interest is the taxpayer's entire interest in the property, such as an income interest or a remainder interest. If, however, the property in which such partial interest exists was divided in order to create such interest and thus avoid certain provisions of § 170(f), the deduction will not be allowed.

In Situation 1 in Rev. Rul. 86-60, 1986-1 C.B. 302, in 1980, A created a charitable remainder annuity trust (CRAT) described in § 664(d)(1) of the Code, retaining an annuity interest in the CRAT for life. In 1984, A transfers A's annuity interest to X, the charitable remainder beneficiary of the CRAT, that is an organization described in § 170(c). Although in creating the CRAT, A had divided the interest A held in the property, the property was not divided in order to avoid § 170(f)(2)(A). The revenue ruling concludes, based on §§ 1.170A-6(a)(2) and 1.170A-7(a)(2)(i), that the gift by A, the grantor, to the remainder beneficiary of A's retained life annuity in the CRAT qualifies for a charitable contribution deduction under § 170.

In this case, Wife's proposed gift of her income interest in Trust A would be analogous to Situation 1 of Rev. Rul 86-80. Upon the termination of the income interest of Wife, the corpus of Trust A would pass to the charitable beneficiaries. Since it is represented that all charitable beneficiaries of Trust A are described within §§ 170(b)(1)(A), 170(c)(2), 2055(a), and 2522(a), Wife (as was the case for Taxpayer A in Rev. Rul. 86-60) would qualify for a charitable contribution deduction under § 170. Accordingly, based on the facts presented and the representations made, we conclude that Wife's gift of her entire income interest in Trust A to the designated charitable beneficiaries of Trust A will qualify for an income tax deduction under § 170(a)(1) for the value of the trust interest transferred. The deduction would be subject to any applicable limitations under § 170, including § 170(b), and subject to any applicable limitations under other sections of the Code.

Ruling 4

Section 4947(a)(2) subjects the private foundation rules of §§ 507 and 4941 to split-interest trusts not exempt from tax under § 501(a) if not all of the unexpired interest of the trust are devoted to charitable purposes and a charitable deduction was allowed under § 170, 2055, or 2522.

Section 4947(a)(2)(C) specifically excepts any amounts transferred in trust before May 27, 1969 from private foundation treatment under §§ 507 and 4941.

Section 53.4947-1(c)(5) of the Foundation and Similar Excise Taxes Regulations states that an amount shall be considered to be transferred in trust only when the transfer is one which meets the requirements for the allowance of the deduction under § 170 among others.

In this case, the private foundation rules of §§ 507 and 4941 are inapplicable to Trust A, because under § 4947(a)(2)(C) the rules do not apply to amounts transferred in trust before May 27, 1969 and all contributions received by Trust A occurred before this date. Accordingly, based on the facts presented and the representations made, we conclude that the provisions of §§ 507 and 4941 do not apply to Trust A because the assets were transferred into Trust A before May 27, 1969.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

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

Sincerely,

_____

George L. Masnik
Chief, Branch 4
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure:
Copy of letter for § 6110 purposes