



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Number: **200841040**
Release Date: 10/10/2008

Date: July 16, 2008

UIL: 507.00-00
507.06-00
4941.00-00
4941.04-00

Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

SE:T:EO:RA:T:3

Legend:

Grantor =
Trust =
CRUT 1 =
CRUT 2 =
A =
B =
Charity =

Dear :

This responds to a letter dated December 10, 2007, and subsequent correspondence submitted on behalf of CRUT 2 by its authorized representatives, requesting rulings under sections 507, 4941 and 4947 of the Internal Revenue Code ("Code").

FACTS

The information submitted states that the Trust was a grantor trust and as such, the grantor reported and paid income taxes on all taxable income of the Trust during his lifetime. The Trust agreement named "A" as a successor trustee upon the death, incompetency, or incapacity of the Grantor. The Trust divided into two separate CRUTs upon the Grantor's death and after payment of death obligations and specific bequests. The provisions of both CRUTs named "A" as trustee. CRUT 1 pays 5 percent annually of the trust assets, determined the first day of the CRUT's taxable year, to "A" for life, and then to "B" if he survives "A". CRUT 2 pays 5 percent annually of the trust assets, determined the first day of the CRUT's taxable year, to "B" for life, and then to "A" if she survives "B". The trust assets are to be distributed to Charity after the last to die of either "A" or "B". If Charity is not in existence then the assets are to be distributed to another qualifying section 501(c)(3) of the Code charitable organization.

The beneficiaries are not related to one another nor are they related to Grantor. All of the individual beneficiaries and Charity's executive director are of full legal capacity. "B" has been examined by his physician, who is experienced and well qualified in his profession and has

conducted a physical examination of "B" and has stated under penalties of perjury that "B" does not have any condition which is expected to result in a shorter than average life expectancy. "B" is not aware of any physical condition that would decrease his normal life expectancy. "B" has signed an affidavit to that effect.

The management of "Charity" believes that receiving funds earlier rather than later will help ensure the survival of the organization by providing continuous program services. "Charity" asserts that receiving the present value of the remainder interest now would allow the continuity and growth of its activities. "B" would prefer that the assets come to him now so that if he should die from unforeseen events, the assets would pass to his heirs rather than have the assets stay in the CRUT 2.

All interested parties (the income beneficiaries, the Trustee and the remainder Charity) have agreed to liquidate the trust and to compute the present value of the life income and the charitable remainder interest, in accordance with the method described in section 1.664-4 of the Income Tax Regulations ("Regulations") using the section 7520 of the Code rate in effect at the time, and distribute the respective amounts to the life-income beneficiaries and to the Charity. The Trustee has submitted to a court of competent jurisdiction to approve termination of CRUT 2. The court has ruled in favor of the termination. Additionally, the Trust does not, by its terms prohibit early termination.

REQUESTED RULINGS

You have requested rulings that the termination of the CRUT 2 is not a taxable event under sections 507(a) and 4941 of the Code.

LAW

Section 507(a) of the Code provides, generally, that, except as provided in section 507(b), the status of any organization as a private foundation shall be terminated only if such organization notifies the Internal Revenue Service that it is terminating its private foundation status and pays the termination tax under section 507(c).

Section 507(c) of the Code imposes a tax on each organization whose private foundation status is voluntarily or involuntarily terminated under section 507(a).

Section 4941(a) of the Code imposes an excise tax:

(1) On self-dealer.--There is hereby imposed a tax on each act of self-dealing between a disqualified person and a private foundation. The rate of tax shall be equal to 10 percent of the amount involved with respect to the act of self-dealing for each year (or part thereof) in the taxable period. The tax imposed by this paragraph shall be paid by any disqualified person (other than a foundation manager acting only as such) who participates in the act of self-dealing. In the case of a government official (as defined in section 4946(c)), a tax shall be imposed by this paragraph only if such disqualified person participates in the act of self-dealing knowing that it is such an act.

(2) On foundation manager.--In any case in which a tax is imposed by paragraph (1), there is hereby imposed on the participation of any foundation manager in an act of self-dealing between a disqualified person and a private foundation, knowing that it is such an act, a tax equal to 5 percent of the amount involved with respect to the act of self-dealing for each year (or part thereof) in the taxable period, unless such participation is not willful and is due to reasonable cause. The tax imposed by this paragraph shall be paid by any foundation manager who participated in the act of self-dealing.

Section 4941(d)(1)(A) of the Code provides that the term "self-dealing" includes any direct or indirect sale or exchange, or leasing, of property between a private foundation and a disqualified person; or a 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) of the Code provides that the term "disqualified person" with respect to a private foundation includes a substantial contributor to a private foundation (including the creator of a trust), a family member of a substantial contributor (including children), and a foundation manager (including a trustee).

Section 4947(a)(2) of the Code provides in the case of a trust which is not exempt from tax under section 501(a), not all of the unexpired interests in which are devoted to one or more of the purposes described in section 170(c)(2)(B), and which has amounts in trust for which a deduction was allowed under section 170, 545(b)(2), 642(c), 2055, 2106(a)(2), or 2522, section 507, section 508(e), section 4941, section 4943, except as provided in subsection (b)(3), section 4944, except as provided in subsection (b)(3), and section 4945 shall apply as if such trust were a private foundation. This paragraph shall not apply with respect to--

(A) any amounts payable under the terms of such trust to income beneficiaries, unless a deduction was allowed under section 170(f)(2)(B), 2055(e)(2)(B), or 2522(c)(2)(B).

Section 53.4946-1(a)(8) of the Foundation and Similar Excise Tax Regulations ("Foundation regulations") provides that for purposes of section 4941 of the Code only, the term "disqualified person" shall not include any organization which is described in section 501(c)(3) (other than an organization described in section 509(a)(4)).

Section 53.4947-1(c)(2)(i) of the Foundation regulations provides that under section 4947(a)(2)(A) of the Code, paragraph (c)(1)(ii) of this section does not apply to any amounts payable under the terms of a split-interest trust to income beneficiaries unless a deduction was allowed under sections 170(f)(2)(B), 2055(e)(2)(B), or 2522(c)(2)(B) with respect to the income interest of any such beneficiary.

Rev. Rul. 69-486, 1969-2 C.B. 159 concerns a non-pro rata distribution of trust property in kind by a trustee who has no authority to make such distribution but did so as a result of a mutual agreement by the beneficiaries, one of which is a charitable organization. The distribution was made as a final distribution of trust property. The trust property consisted of notes that had not appreciated in value and common stock that had appreciated in value. By agreement, all of the notes were distributed to the charity and the stock to the individual

beneficiary. The ruling holds that the distribution was equivalent to a pro rata distribution of the stock and notes to both followed by an exchange of the charity's share of the common stock for the individual's pro rata share of the notes.

ANALYSIS

CRUT 2 is described in section 4947(a)(2) of the Code by having an income beneficiary "B" and a charitable remainderman, the Charity described in sections 509(a)(1) and 170(b)(1)(A)(vi) of the Code. By being described in section 4947(a)(2), CRUT 2 is subject to the provisions of sections 507 and 4941 as if it were a private foundation. "B" is not a disqualified person with respect to CRUT 2 because "B" is not a disqualified person with respect to the charitable remainder beneficiary, the Charity, since Charity is a public charity described in section 509(a). "B" is not a substantial contributor to CRUT 2, is not a family member of a substantial contributor (including children), nor a foundation manager (including a trustee). As such, "B" is not a disqualified person with respect to the Trust.

Since section 4941 of the Code only applies to a transaction between a disqualified person and a private foundation, the early termination of CRUT 2 is not a self-dealing transaction with respect to "B". Furthermore, because the effects of the transaction is to vest the income interest and remainder interest in the remainder beneficiary, the Trust will no longer be a split interest trust, and sections 4947(a)(2) and 507(a) of the Code will not apply.

RULINGS

Based solely on the representations made and the information submitted, we have reached the following conclusion:

- 1 The early termination of CRUT 2 will not be considered an act of self-dealing under section 4941(a)(2) of the Code.
- 2 The early termination of CRUT 2 will not result in the imposition of a termination tax under section 507(c) of the Code.

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 section 664.

This ruling is based on the facts as they were presented and on the understanding that there will be no material changes in these facts. This ruling does not address the applicability of any section of the Code or regulations to the facts submitted other than with respect to the sections described. Because it could help resolve questions concerning your federal income tax status, this ruling should be kept in your permanent records.

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

This ruling will be made available for public inspection under section 6110 of the Code after certain deletions of identifying information are made. For details, see enclosed Notice 437, Notice of Intention to Disclose. A copy of this ruling with deletions that we intend to make available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

In accordance with the Power of Attorney currently on file with the Internal Revenue Service, we are sending a copy of this letter to your authorized representative.

Sincerely,

Robert C. Harper, Jr.
Manager, Exempt Organizations
Technical Group 3

Enclosure
Notice 437