

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

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March 19, 1999

LEGEND:

Trust =

Second Trust =

A =

B =

Trustee =

State =

Court =

Charity =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Dear

This letter responds to your letter dated November 4, 1998, and subsequent correspondence requesting the following rulings:

1. Trust, as reformed, qualifies as a charitable remainder unitrust under § 664(d)(2) and (3) of the Internal Revenue Code, and
2. The reformation of Trust is a “qualified reformation” under § 2055(e)(3).

FACTS

A died on Date 2. Under the terms of A's will, all of A's property and estate, after payment of debts, taxes, and expenses, passed to Trust, a revocable unfunded inter vivos trust established by A on Date 1, that became irrevocable on A's death. Trust's governing instrument provides that commencing on A's death, the Trustee is required to pay a unitrust amount to a Second Trust for the benefit of B for life, with remainder to charitable organizations described in § 170(c). On B's death, the Trust's assets will be distributed to Charity, an organization described in § 2055(a).

Trust is governed by the laws of State. When Trust instrument was executed, B was a minor. However, when A died and Trust was subsequently funded, B was of majority age.

Because Second Trust is an impermissible recipient of the unitrust amount under § 1.664-3(a)(3) and (5) of the Income Tax Regulations, Trust does not qualify as a charitable remainder unitrust under § 664(d)(2) and (3). Consequently, on Date 3, Trustee petitioned Court to terminate Second Trust and reform Trust to ensure that Trust qualifies as a charitable remainder unitrust under § 664(d)(2) and (3). By final order dated Date 4, Court terminated Second Trust and reformed Trust to make B the income beneficiary of Trust for her life. It is represented that the reformation is effective as of A's date of death.

LAW AND ANALYSIS

Under § 664(d)(2), a charitable remainder unitrust is a trust that provides for the distribution of the unitrust amount, at least annually for life or a term of years, to one or more persons (at least one of which is not a charitable organization) with an irrevocable remainder interest to be held for the benefit of, or paid over to, a qualified charitable organization.

Section 1.664-1(a)(4) provides that for a trust to be a charitable remainder trust, it must satisfy the definition of, and function exclusively as, a charitable remainder trust from the creation of the trust. Solely for purposes of § 664 and the regulations thereunder, the trust will be deemed to be created at the earliest time that neither the grantor nor any other person is treated as the owner of the entire trust under subpart E, part 1, subchapter J, chapter 1, subtitle A of the Code, but in no event prior to the time property is first transferred to the trust. For the preceding sentence, neither the grantor nor the grantor's spouse is treated as the owner of the trust merely because the grantor or the grantor's spouse is named as a recipient of the annuity or unitrust amount.

Section 1.664-1(a)(5)(i) provides that for purposes of §§ 2055 and 2106, a charitable remainder trust is deemed created at the date of death of the decedent (even though the trust is not funded until the end of a reasonable period of administration or settlement) if the obligation to pay the annuity or unitrust amount with respect to the property passing in trust at the death of the decedent begins as of the date of death of the decedent, even though the requirement to pay such amount is deferred.

Section 1.664-3(a)(3)(ii) provides that a trust is not a charitable remainder unitrust if any person has the power to alter the amount paid to any named person other than an organization described in § 170(c) if such power would cause any person to be treated as the owner of the trust, or any portion thereof, if subpart E, part 1, subchapter J, chapter 1, subtitle A of the Code were applicable to such trust.

Section 1.664-3(a)(4) provides, in part, 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). Notwithstanding the preceding sentence, the grantor may retain the power exercisable only by will to revoke or terminate the interest of any recipient other than an organization described in § 170(c).

Section 2055(a) provides that 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, and transfers to or for a corporation or certain other organizations organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes.

Section 2055(e)(2)(A) provides that where an interest in property passes or has passed from the decedent to a person, or for a use, described in § 2055(a), and an interest (other than an interest that is extinguished upon the decedent's death) in the same property passes or has passed (for less than an adequate and full consideration in money or money's worth) from the decedent to a person, or for a use, not described in § 2055(a), no deduction is allowed under § 2055(a) for the interest that passes or has passed to the person, or for a use, described in § 2055(a), unless in the case of a remainder interest, the interest is in a charitable remainder annuity trust or a charitable remainder unitrust (described in § 664) or a pooled income fund (described in

§ 642(c)(5)).

Section 2055(e)(3)(A) provides that a deduction is allowed under § 2055(a) for any qualified reformation.

Section 2055(e)(3)(B) defines the term “qualified reformation” to mean a change of a governing instrument by reformation, amendment, construction, or otherwise that changes a reformable interest into a qualified interest, but only if--

(i) any difference between (I) the actuarial value (determined as of the date of the decedent’s death) of the qualified interest, and (II) the actuarial value (as so determined) of the reformable interest, does not exceed 5 percent of the actuarial value (as so determined) of the reformable interest,

(ii) in the case of (I) a charitable remainder interest, the nonremainder interest (before and after the qualified reformation) terminated at the same time, or (II) any other interest, the reformable interest and the qualified interest are for the same period, and

(iii) the change is effective as of the date of the decedent’s death.

Section 2055(e)(3)(C)(i) defines “reformable interest” as any interest for which a deduction would be allowable under § 2055(a) at the time of the decedent’s death but for § 2055(e)(2).

Section 2055(e)(3)(C)(ii) provides that generally the term “reformable interest” does not include any interest unless, before the remainder vests in possession, all payments to persons other than an organization described in § 2055(a) are expressed either in specified dollar amounts or a fixed percentage of the fair market value of the property.

Section 2055(e)(3)(D) defines “qualified interest” as an interest for which a deduction is allowable under § 2055(a).

The interest passing to Charity under Trust is a reformable interest under § 2055(e)(3)(C)(i) because an estate tax deduction for the value of the remainder interest would have been allowable under § 2055(a) but for the provisions of § 2055(e). In addition, all payments to persons other than an organization described in § 2055(a) are expressed as a fixed percentage of the fair market value of the property.

It is represented that under State law the reformation of Trust is effective as of the date of the Decedent’s death, and the nonremainder interest will terminate at the same time before and after the reformation. It is also represented that the difference between the actuarial value of the qualified interest and the actuarial value of the

reformable interest does not exceed 5 percent of the actuarial value of the reformable interest.

The governing instrument of Trust, as reformed, contains provisions set forth in Rev. Rul. 72-395, 1972-2 C.B. 340, as modified by Rev. Rul. 80-123, 1980-1 C.B. 205, and Rev. Rul. 82-128, 1982-2 C.B. 71, and clarified by Rev. Rul. 82-165, 1982-2 C.B. 117. After reviewing the facts and relevant documents submitted, we conclude that Trust, as reformed, satisfies the requirements of a charitable remainder unitrust under § 664(d)(2) and (3). Accordingly, the reformation qualifies as a qualified reformation under § 2055(e)(3), and an estate tax charitable deduction is allowed for the present value of the remainder interest in Trust, determined in accordance with § 20.2055-2(f)(2)(ii) of the Estate Tax Regulations.

No opinion is expressed on the federal tax consequences of the formation or operation of the Trust under the provisions of any other section of the Code.

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

Under a power of attorney on file in this office, we are sending a copy of this letter to Trustee.

Sincerely yours,

Jeff Erickson
Assistant to the Branch Chief,
Branch 3
Office of the Assistant Chief
Counsel
(Passthroughs and Special
Industries)

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