

Section 170.—Charitable Contributions

26 CFR 1.170A-9: Definition of section 170(b)(1)(A) organization.

Does a fund satisfy the pooled income fund requirements of § 642(c)(5)(E) of the Internal Revenue Code if the fund is maintained by a community trust and in the instrument of transfer either (1) the donor gives the community trust complete discretion to determine how the remainder interest will be used to further charitable purposes, or (2) the donor requests or requires that the community trust place the proceeds from the remainder interest in one of its component funds that is designated to benefit a specific charitable organization? See Rev. Rul. 96-38, on this page.

Section 355.—Distribution of Stock and Securities of a Controlled Corporation

26 CFR 1.355-2: Limitations.

The revenue procedure amplifies the “No Rule” revenue procedure, Rev. Proc. 96-3, 1996-1 I.R.B. 82, to include certain transactions under § 355 of the Code. See Rev. Proc. 96-39, page 11.

Section 642.—Special Rules for Credits and Deductions

26 CFR 1.642(c)-5: Definition of pooled income fund.
(Also § 170; 1.170A-9.)

Pooled income fund; community trust; maintenance requirement. This ruling provides guidance on when a fund maintained by a community trust satisfies the maintenance requirement for a pooled income fund under section 642(c)(5)(E) of the Code.

Rev. Rul. 96-38

ISSUE

Does a fund satisfy the pooled income fund requirements of § 642(c)(5)(E) of the Internal Revenue Code if the fund is maintained by a community trust and in the instrument of transfer either (1) the donor gives the community trust complete discretion to determine how the remainder interest will be used to further charitable purposes, or (2) the donor requests or requires that the community trust place the proceeds from the remainder interest in one of its component funds that is designated to benefit a specific charitable organization?

FACTS

Both *A* and *B* are organizations described in § 170(b)(1)(A)(vi) and are community trusts described in § 1.170A-9(e)(10) of the Income Tax

Regulations. Each pooled income fund’s declaration of trust and instruments of transfer (collectively referred to as the “governing instrument”) satisfy the requirements of § 642(c)(5)(A)–(D) and (F); therefore, each proposed fund will qualify as a pooled income fund if the provisions of § 642(c)(5)(E) are satisfied.

Situation 1. *A* proposes to establish a pooled income fund that *A* will maintain. Under the terms of the governing instrument, a donor contributes to *A* an irrevocable remainder interest in the property that the donor transfers to the pooled income fund, and *A* has full discretion to determine how to use the remainder interest to further *A*’s charitable purposes.

Situation 2. *B* proposes to establish a pooled income fund that *B* will maintain. Under the terms of the governing instrument, a donor contributes to *B* an irrevocable remainder interest in the property that the donor has transferred to the pooled income fund. In the instrument of transfer, however, the donor may either request or require that after the death of the donor’s designated income beneficiaries, *B* place the proceeds of the remainder interest in one of *B*’s component funds that satisfies the requirements of § 1.170A-9(e)(11)(ii) and is designated to benefit a specific charitable organization. Under the terms of *B*’s donor-designated component funds, *B* makes current distributions of the income of the component fund to the designated charitable organization. *B* may also distribute principal to the designated charitable organization to finance special projects or in extraordinary circumstances. As required in § 1.170A-9(e)(11)(v)(B)(1), *B*’s governing body has the power to modify any restriction on the distributions from its component funds if, in the sole judgment of the governing body, the restriction becomes unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the community or area served.

LAW AND ANALYSIS

A pooled income fund is a trust that satisfies the requirements listed in § 642(c)(5). Section 642(c)(5)(A) and § 1.642(c)-5(b)(1) provide that each donor who transfers property to the trust must contribute an irrevocable remainder interest in the property to or for the

use of an organization described in § 170(b)(1)(A), except certain private foundations described in clauses (vii) and (viii) of § 170(b)(1)(A).

Section 642(c)(5)(E) provides that the trust must be maintained by the organization to which the remainder interest is contributed and of which no donor or beneficiary of an income interest is a trustee. Section 1.642(c)-5(b)(5) provides that the maintenance requirement of § 642(c)(5)(E) is satisfied only if the public charity exercises control directly or indirectly over the fund.

The maintenance requirement is designed to ensure that the fund’s assets will not be manipulated for the benefit of noncharitable interests and that the amount received by the charitable organization will reflect the amount of any charitable contribution deduction the donor may have taken for contributing the remainder interest. H.R. Rep. No. 413 (Part 1), 91st Cong., 1st Sess. 58 (1969), 1969-3 C.B. 200, 237; and S. Rep. No. 552, 91st Cong., 1st Sess. 87 (1969), 1969-3 C.B. 423, 479. For an organization to satisfy the maintenance requirement of § 642(c)(5)(E), it may not be serving merely as a conduit for a gift to another beneficiary, but instead must be receiving a contribution itself that it will use to achieve its charitable purposes.

Under § 1.170A-9(e)(11), a group of funds is treated as a single community trust if the funds operate under a common name, have a common governing instrument, prepare common reports, and are under the direction of a common governing board that has the power to modify any restriction on distributions from any of the funds, if in the sole judgment of the governing body, the restriction becomes unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the community or area served. Under § 1.170A-9(e)(11)(ii), a fund created by gift, bequest, or other transfer that is not subject to any material restriction or condition (within the meaning of § 1.507-2(a)(8)) can be treated as a component part of the single entity. A fund held by a community trust and designated by the donor to pay its income annually to a specific public charity is not subject to a material restriction and therefore may qualify as a component part of the community trust (component fund). § 1.507-2(a)(8)(v), *Example (3)*.

DRAFTING INFORMATION

In *Situation 1* the governing instrument provides that the donor contributes an irrevocable remainder interest in the contributed property to A, and A has discretion over how to use the remainder interest to further charitable purposes. Although A may elect to use some or all of the remainder interest for the benefit of other charitable organizations, A is given full dominion and control over the remainder interest. Therefore, for § 642(c)(5), a donor in *Situation 1* will be treated as contributing the remainder interest to A. Because A will maintain the fund, the fund will satisfy the requirements of § 642(c)(5)-(E) and will qualify as a pooled income fund under § 642(c)(5).

In *Situation 2* the governing instrument allows a donor in the instrument of transfer either to request or to require that B place the proceeds from the remainder interest in one of its designated funds that is a component part of B under § 1.170A-9(e)(11)(ii). Under § 1.170A-9(e)(11), B's component funds, including its donor-designated funds, are treated as a single entity, rather than separate entities. Thus, even though the donor in *Situation 2* will either request or require that B place the proceeds of the remainder interest into one of its donor-designated funds, the donor will be treated under § 642(c)(5) as contributing the remainder interest to B. Because B will maintain the fund, the fund will satisfy the requirements of § 642(c)(5)(E) and will qualify as a pooled income fund under § 642(c)(5).

The principal author of this revenue ruling is Jeffrey A. Erickson of the Office of Assistant Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue ruling, contact Mr. Erickson at (202) 622-3070 (not a toll-free call).

HOLDINGS

(1) A fund maintained by a community trust satisfies the maintenance requirement of § 642(c)(5)(E) if, in the instrument of transfer, the donor gives the remainder interest to the community trust with full discretion to choose how the remainder interest will be used to further charitable purposes.

(2) A fund maintained by a community trust satisfies the maintenance requirement of § 642(c)(5)(E) if, in the instrument of transfer, the donor either requests or requires that the community trust place the proceeds of the remainder interest in a fund that has been designated to be used for the benefit of specific charitable organizations provided the fund is a component part that satisfies the requirements of § 1.170A-9(e)(11)(ii).