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November 07, 2007

Legend

Taxpayer =

Trust =

Family Trust =

Charitable Organization =

State =

D1 =

Dear :

This letter responds to a letter dated October 25, 2006, and subsequent correspondence, submitted on behalf of Trust by its authorized representative, requesting rulings regarding the tax consequences of a proposed division of a charitable remainder unitrust (CRUT).

The information submitted states that Taxpayer, a resident of State, created Trust, on D1. Taxpayer represents that Trust qualifies as a net-income with makeup charitable remainder unitrust (NIMCRUT) under the provisions of § 664(d)(2) of the Internal Revenue Code. The unitrust beneficiaries of Trust are Taxpayer and Family Trust. Neither Taxpayer nor Family Trust are organizations described in § 170. The

remainder beneficiary of Trust is a charitable organization described in §§ 170(b)(1)(A), 170(c), 2055(a) and 2522(a).

Trust's assets consist of cash, investments in real estate and marketable securities. Prior to a triggering event, the unitrust amount equals the lesser of (i) Trust income for such taxable year, as defined in § 643(b), and (ii) seven percent of the net fair market value of the assets of Trust valued as of the first day of such taxable year. If Trust income for any taxable year exceeds seven percent of the net fair market value of Trust assets valued as of the first day of such taxable year, the unitrust amount for such taxable year shall also include such excess income to the extent that the aggregate of the amount paid in prior years is less than seven percent of the aggregate net fair market value of Trust assets for such years. At the beginning of the first taxable year following the year in which the triggering event occurs, the unitrust amount shall be an amount equal to seven percent of the net fair market value of the assets of Trust valued as of the first day of such taxable year.

At the time Trust was created Taxpayer was a resident of State. Accordingly, Trust provides that State law governs the interpretation of Trust. Taxpayer has remained a resident of State since the creation of Trust.

The Charitable Organization is an organization described in §§ 170(b)(1)(A), 170(c), 2055(a) and 2522(a).

Taxpayer proposes to make a contribution of an undivided portion of his unitrust interest in Trust to the Charitable Organization. In order to accomplish this result, Taxpayer, in his individual capacity and as trustee of Trust, proposes the following transaction. Taxpayer, as trustee, will divide Trust into two separate trusts, Trust A and Trust B. The terms of Trust A and Trust B will be the same as the terms of Trust. Taxpayer, as trustee, represents that at the time Trust is divided the assets allocated to Trust A and Trust B will be fairly representative of the aggregate adjusted bases of the Trust assets and that the division of the assets between Trust A and Trust B will be on a pro rata basis with respect to each major class of investments held at the date of the division, and within each class, will be fairly representative of the overall appreciation or depreciation of the assets therein. Trust A will consist of approximately two-thirds of the pre-division value of Trust. Trust B will consist of the remaining portion of such value. The Charitable Organization will remain the remainder beneficiary of both Trust A and Trust B. Taxpayer will irrevocably terminate the contingent right of Family Trust to become the recipient of the unitrust amount in Trust B and agree that he will also exercise the power granted to him under Trust to terminate such contingent right in his last will. In addition, State law permits the trustee of a trust, with court approval to disclaim, in whole or in part, any interest in property. The trustee of Family Trust will seek court approval to disclaim its right to become the recipient of the unitrust amount. Finally, Taxpayer will contribute his undivided unitrust interest in Trust B to the Charitable Organization.

Taxpayer represents that under State law, the segregation of assets into Trust B, Taxpayer exercising his power to terminate the contingent right of Family Trust to become the recipient of the unitrust amount of Trust B, the contribution to the Charitable Organization of Taxpayer's unitrust interest in Trust B, and the designation of the Charitable Organization as the remainder beneficiary of Trust B, will result in a merger of the unitrust and remainder interests in Trust B.

Taxpayer represents that he did not divide his interest in Trust in order to avoid the partial interest rule of section 170(f)(3)(A).

Taxpayer requests the following rulings:

1. The division of Trust by Taxpayer, as trustee of Trust, into Trust A and Trust B pursuant to State law and the inter vivos distribution to the Charitable Organization of the entire corpus of Trust B corresponding to the undivided unitrust interest gifted by Taxpayer will not cause Trust A to cease to be a trust as described in § 664(d)(2).

2. For the year or years in which Taxpayer transfers an undivided portion of his unitrust interest to the Charitable Organization described in §§ 170(b)(1)(A), 170(c), 2055(a), and 2522(a), Taxpayer will be entitled to a charitable income tax deduction under section 170(a)(1) to the extent of the present value of the unitrust interest transferred as of the date of transfer, calculated as provided in §§ 664 and 7520 and § 25.2512-5 of the Gift Tax Regulations.

3. For the year or years in which Taxpayer transfers an undivided portion of his unitrust interest to the Charitable Organization described in §§ 170(b)(1)(A), 170(c), 2055(a), and 2522(a), Taxpayer will be entitled to a charitable gift tax deduction under section 2522(a) to the extent of the present value of the unitrust interest transferred as of the date of transfer, calculated as provided in §§ 664, 7520, and § 25.2512-5.

4. If at the time of any transfers by Taxpayer of an undivided portion of his unitrust interest to the Charitable Organization described in sections 170(b)(1)(A), 170(c), 2055(a), and 2522(a), Trust has realized capital gain income in prior years, which income was not included in the unitrust amounts paid to Taxpayer and therefore not recognized by Taxpayer, capital gain will not then be included in Taxpayer 's income by the reason of his transfer of a portion of his unitrust interest to a charitable organization.

RULING 1

Section 664(c) provides, generally, that a charitable remainder unitrust shall be exempt from federal income tax.

Section 664(d)(2) provides that a charitable remainder unitrust is 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 section 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 use of any person other than an organization described in § 170(c), (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 qualified 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 1.664-3(a)(4) provides that no amount other than the unitrust amount may be paid to or for the use of any person other than an organization described in § 170(c). However, the governing instrument may provide that any amount other than the unitrust amount shall be paid (or may be paid in the discretion of the trustee) to an organization described in § 170(c) provided that, in the case of distributions in kind, the adjusted basis of the property distributed is fairly representative of the adjusted basis of the property available for payment on the date of payment.

Taxpayer proposes to divide Trust into Trust A and Trust B. The terms of Trust A and Trust B will be the same as the terms of Trust. Taxpayer will then contribute to the Charitable Organization his unitrust interest in Trust B and designate the Charitable Organization as the remainder beneficiary of Trust B, thereby effectuating a merger of interests under State law. Although this merger will cause a termination of Trust B, Trust A will continue to be in the form of and will continue to function as a charitable remainder unitrust within the meaning of § 664(d)(2). Thus, the division of Trust into Trust A and Trust B and the inter vivos distribution of the entire corpus of Trust B to the Charitable Organization will not cause Trust A to cease to function as a charitable remainder unitrust within the meaning of § 664(d)(2).

RULING 2

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(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) 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 section 170(f), the deduction will not be allowed.

Rev. Rul. 86-60, 1986-1 C.B. 302, Situation 1, considers whether a donation qualifies for the charitable contribution deduction under § 170, if a taxpayer, A, who is the grantor and life beneficiary of a charitable remainder annuity trust (CRAT) donates A's annuity interest in the CRAT to the remainder beneficiary of the CRAT. In 1980, A had created a CRAT described in § 664(d)(1). A retained an annuity interest in the CRAT for life. Although A had previously divided the interest A held in the property, the division was not to avoid § 170(f)(2)(A). The remainder beneficiary was X, a charitable organization described in § 170(c). In 1984, A transferred the annuity interest in the CRAT to X. Rev Rul. 86-60 concludes, based on §§ 1.170A-6(a)(2) and 1.170A-7(a)(2)(i) of the regulations, 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.

The present case is analogous to Situation 1 of Rev. Rul. 86-60. In the present case, Taxpayer retained a unitrust interest in Trust, which he created on D1. Now Taxpayer proposes to transfer a portion of his unitrust interest to the Charitable Organization, a charity described in §§ 170(b)(1)(A) and 170(c). Unlike the situation in Rev. Rul. 86-60, Trust will be divided into two trusts, Trust A and Trust B. Taxpayer proposes to contribute his unitrust interest in Trust B, which will be segregated from Trust, instead of all of his interest in Trust. Taxpayer represents that the Charitable Organization’s unitrust and remainder interests will merge, and the Charitable Organization will be entitled to an immediate distribution of the Trust B corpus.

It is represented that Taxpayer did not divide his interest in the property originally transferred to the Trust to avoid the partial interest rules. Taxpayer now intends in effect to contribute an undivided portion of his entire current interest in the property to the Charitable Organization. Taxpayer intends to do this by dividing Trust into two

trusts, then contributing his interest in Trust B to the Charitable Organization. Similar to taxpayer A in Rev. Rul. 86-60, Taxpayer would be entitled to a charitable contribution deduction for a contribution of an undivided portion of his unitrust interest in Trust to the Charitable Organization under the rule in § 170(f)(3)(B)(ii). That Taxpayer, as trustee, will divide Trust before making the contribution does not adversely affect the charitable contribution deduction. Therefore, Taxpayer's transfer of his interest in Trust B will qualify for a charitable contribution deduction under § 170.

The value of Taxpayer's contribution under § 170 will be the present value of the right to receive unitrust payments as provided in Trust B for a term starting on the date of the transfer of the unitrust interest to the Charitable Organization and ending on Taxpayer's date of death. The deduction will be subject to any applicable limitations under § 170, including § 170(b), and subject to any applicable limitations under other sections of the Code.

RULING 3

Section 2501(a)(1) imposes a tax, for each calendar year, on the transfer of property by gift by any individual, resident or nonresident.

Section 2511 provides 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.

Under § 2512(a), if a gift is made in property, the value of the property on the date of the gift is the amount of the gift. Section 2512(b) provides that where property is transferred for less than adequate and full consideration in money or money's worth, the amount by which the value of the property exceeds the value of the consideration received shall be deemed a gift.

Under § 25.2512-5(a), the fair market value of an annuity or unitrust interest is its present value, determined in accordance with § 25.2512-5(d).

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 a corporation, or trust, or community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 2522(c)(2) disallows the gift tax charitable deduction 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), and an interest in the same property is retained by the donor, or 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), unless (A) in the case of a remainder interest, such interest is in a trust which is a charitable remainder annuity trust or a charitable remainder unitrust (described in § 664) or a pooled income fund (described in § 642(c)(5)), or (B) in the case of any other interest, such interest is in the form of a guaranteed annuity or is a fixed percentage distributed yearly of the fair market value of the property (to be determined yearly) (a unitrust interest).

Under § 25.2522(c)-3(d)(2)(v), the present value of a unitrust interest is determined by subtracting the present value of all interests in the transferred property other than the unitrust interest from the fair market value of the transferred property. Under § 25.2522(c)-3(d)(2)(ii), the present value of a remainder interest in a charitable remainder unitrust is to be determined under § 1.664-4.

Situation 1 of Rev. Rul. 86-60 considers a situation where A, in 1980, creates a charitable remainder annuity trust pursuant to which A retained the right to receive an annuity interest for life. On A's death, the trust corpus is to pass to charity. In 1984, A transfers A's entire annuity interest to the charitable remainder beneficiary. 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 of trust property for private purposes. Although the transfer of the remainder interest to charity divided A's prior interest, that transfer was for charitable, not private purposes. 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 section 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).

The facts in this case are similar to those described in Situation 1 of Rev. Rul. 86-60, except that Taxpayer intends to divide Trust into Trust A and Trust B. Following the division of Trust, Taxpayer will transfer his entire unitrust interest in Trust B to the Charitable Organization and will name the Charitable Organization as the remainder beneficiary of Trust B, thereby effectuating a merger of interests under State law. After the transfer, Taxpayer will not retain any interest in Trust B. Further, Taxpayer has not made a transfer for private purposes either before or at the time of his unitrust interest in Trust B to the Charitable Organization.

Based on the foregoing, we conclude that for the year in which Taxpayer transfers the entire balance of his unitrust interest in Trust B to the Charitable Organization, Taxpayer will be entitled to a gift tax charitable deduction under § 2522(a) to the extent of the present value of the unitrust interest transferred as of the date of transfer.

RULING 4

Based solely on the facts and the representations submitted, we conclude that no amounts should be included in Taxpayer's gross income by reason of the prior capital gains realized by Trust, in connection with Taxpayer's charitable contribution of a portion of his unitrust interest. The above conclusion is based on the fact that at the time Trust is divided the assets allocated to Trust A and Trust B must be fairly representative of the aggregate adjusted bases of the Trust assets and that the division of the assets between Trust A and Trust B must be on a pro rata basis with respect to each major class of investments held at the date of the division, and within each class, must be fairly representative of the overall appreciation or depreciation of the assets therein.

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. Specifically, we do not express or imply an opinion regarding whether Trust otherwise qualifies as a CRUT under § 664(d)(2). In addition, we express no opinion as to the method of determining the present value of the unitrust interest in Trust B for purposes of calculating the amount of the income and gift tax charitable deductions under § 170(c) or 2522(a).

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to the taxpayer’s authorized representative.

Sincerely,

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

Enclosures: 2
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