Internal Revenue Service

Number: **201029002**
Release Date: 7/23/2010

Index Number: 664.03-02

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:PSI:B1
PLR-146360-09
Date:
April 14, 2010

LEGEND:

Trust =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

State =

Court =

A =

B =

a =

b =

c =

Trust A =

Trust B =

Dear :

This responds to your authorized representative's letter dated , and subsequent correspondence, in which you requested rulings regarding a proposed division of a charitable remainder trust.

The facts submitted and the representations made are as follows: On Date 1, Trust was established. A and B represent Trust qualifies as a charitable remainder trust, described in § 664(d)(2) of the Internal Revenue Code (the "Code"). A and B were married prior to Date 1 and, thereafter, until Date 3, the date of their divorce. During their marriage, A and B were residents of State, a community property state. A is the trustee of Trust. While A and B took a deduction under section 170 of the Code at the time Trust was established, Trust represents that no deduction was allowed under sections 170(f)(2)(B), 642(c), 2055(e)(2)(B), or 2522(c)(2)(B) with respect to the income interest of any lifetime beneficiary.

Paragraph 2.1 of Trust provides for annual payments to be made to A, each taxable year during A's lifetime, a unitrust amount equal to a percent of the net fair market value of its assets as valued on the first business day of that year. Upon A's death, if B survives A, the annual payments will be made to B during B's lifetime. Trust requires the unitrust payments to A and B to be made in monthly installments. Under paragraph 2.5 of Trust, A has a right to revoke B's beneficial interest in Trust, which right he may exercise in his will.

Paragraph 2.6 of Trust provides that, subject to A's right to revoke B's interest in Trust, B's interest in Trust will take effect upon A's death, but only if B furnishes funds for the payment of any federal estate tax or state death taxes for which the trustee may be liable upon A's death.

Paragraph 2.7 of Trust provides that upon the death of the last to die of A and B, or solely after A's death if A exercises his right to revoke B's interest, the trustee will distribute all principal and undistributed income of Trust to charitable beneficiaries, which must be charitable organizations described in §§ 170(b)(1)(A), 170(c), 2055(a), and 2522(a). A has the power to designate the charitable beneficiaries during his life. If A does not revoke B's interest and B survives A, B has the power to designate the charitable beneficiaries. A or B designates a charitable beneficiary and the proportion in which it will receive the assets of Trust either by delivering a signed statement to the trustee during his or her lifetime or by including the designation in his or her last will. Trust includes a list of charitable organizations to which the trustee must distribute any unappointed portions of the assets should both A and B fail, in whole or in part, to exercise their powers. If, at the time when the assets are distributed, any designated

charitable beneficiary is not an organization described in §§ 170(b)(1)(A), 170(c), 2055(a) and 2522(a), the trustee has sole discretion to choose one or more organizations that are described in those provisions and determine the proportions in which to distribute the trust assets to them.

On Date 2, Court issued a judgment dissolving the marriage of A and B, as of Date 3. In the judgment, Court expressly reserved jurisdiction for later determination of all other pending marital issues, which includes the division of the marital property in Trust. As part of the dissolution proceeding, the character of the property contributed to Trust as community property or separate property was determined. On Date 4, A and B finalized a settlement agreement which, in relevant part, resolved what percentage of Trust was attributable to each party's contribution to the Trust and thus, what each party would be entitled to following the divorce. The parties agreed that b percent of the value of Trust was attributable to A's contribution and that c percent of the value of Trust resulted from B's contribution. Further, pursuant to the settlement agreement, the parties agreed to divide the assets of Trust into two charitable remainder unitrusts, Trust A and Trust B. Based upon the percentages agreed upon by the parties, and authorized by Court on Date 5, Trust A will receive b percent of the assets of Trust and Trust B will receive c percent of the assets of Trust. The proposed division of Trust in to Trust A and Trust B will result in the division of Trust corpus and not merely a distribution of income. Trust represents that it has not given notice of its intent to terminate under section 507 of the Code. Court's order incorporated A and B's settlement agreement with respect to the division of Trust. The Court's order is conditioned upon a favorable ruling from the Internal Revenue Service.

In general, the terms of Trust A and Trust B are the same as those of Trust, with the following exceptions. First, each year during their respective lifetime, A and B will be the sole non-charitable beneficiary of their respective trusts and will be entitled to a unitrust amount equal to a percent of fair market value of the assets of their respective trusts. Second, A and B will maintain no interest in each other's trust. Third, upon A's death, all remaining assets of Trust A will be distributed to charitable beneficiaries designated by him or named in Trust A. Upon B's death, all remaining assets of Trust B will be distributed to charitable beneficiaries designated by her or named in Trust B.

Trust, A, and B have requested rulings on the effect of Trust's division into Trust A and Trust B.

LAW AND ANALYSIS

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 § 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.

Therefore, based solely on the facts and the representations submitted, the division of Trust into Trust A and Trust B will not cause either Trust, Trust A or Trust B to fail to qualify as charitable remainder trusts under § 664.

Rulings 2

Section 61(a) provides that, except as otherwise provided, gross income means all income from whatever source derived. Under § 61(a)(3), gross income includes gains derived from dealings in property.

Section 1001(a) provides that the gain realized from the sale or other disposition of property is the excess of the amount realized over the adjusted basis provided in § 1011 for determining gain, and the loss realized is the excess of the adjusted basis provided in § 1011 for determining loss over the amount realized. Section 1001(c) provides that, except as otherwise provided, the entire amount of gain or loss realized must be recognized.

Section 1.1001-1(a) of the Income Tax Regulations provides that, except as otherwise provided in subtitle A of the Code, the gain or loss realized from the exchange of property for other property differing materially either in kind or in extent is treated as income or as loss sustained.

An exchange of property results in the realization of gain or loss under § 1001, if the properties exchanged are materially different. Cottage Savings Ass'n v.

Commissioner, 499 U.S. 554 (1991). In defining what constitutes a material difference for purposes of § 1001(a), the Court stated that "properties are 'different' in the sense that is 'material' to the Internal Revenue Code so long as their respective possessors enjoy legal entitlements that are different in kind or extent." Id. at 565.

Section 1041(a) provides that no gain or loss will be recognized on a transfer of property from an individual to (or in trust for the benefit of) a spouse, or former spouse if the transfer is incident to the divorce. Under § 1041(c), a transfer of property is incident to the divorce if the transfer occurs (1) within one year after the date on which the marriages ceases, or (2) is related to the cessation of the marriage.

Section 1.1041-1T(b), Q&A-7, of the temporary Income Tax Regulations provides that a transfer of property is related to the cessation of the marriage if the transfer is pursuant to a divorce or separation instrument, as defined in § 71(b)(2), and the transfer occurs not more than six years after the date on which the marriage ceases. A divorce or separation instrument includes a modification or amendment to such decree or instrument.

In the present case, under the terms of Trust, A has a present unitrust interest to receive a percent of Trust's annual asset value. B has a future interest in Trust, specifically a right to receive the same percentage of the annual asset value of Trust after A's death if A dies without revoking her interest. The proposed division of Trust contemplates the transfer of b percent of the assets of Trust to Trust A and the transfer of c percent of the assets of Trust to Trust B. A, as the sole present unitrust beneficiary of Trust A, will see the value of the trust assets from which to compute his annual unitrust amount decline by c percent. By contrast, B, as the sole present unitrust beneficiary of Trust B, will immediately possess a unitrust interest with respect to the remaining c percent of Trust's assets.

Based on the facts presented, we conclude that the legal rights and entitlements that A and B possess before Trust's division are materially different in kind and extent from the legal rights and entitlements they will possess after the division. Therefore, both A and B will realize gain or loss on their transfers of property resulting from the proposed division under § 1001(a) and § 1.1001-1(a). However, we further conclude that the transfers by A and B resulting from the proposed division are transfers of property incident to a divorce within the meaning of § 1041. Therefore, under § 1041(a), neither A nor B will recognize gain or loss on the transfers. Under § 1223(2) of the Code, the taxpayer's holding period for property, however acquired, includes the period for which the property was held by any other person, if, for the purpose of determining gain or loss from a sale or exchange, the property has the same basis in whole or in part in the taxpayer's hands as it would in the hands of the other person.

Section 1015(a) provides, that if property was acquired by gift after December 31, 1920, the basis shall be the same as it would be in the hands of the donor or the last

preceding owner by whom it was not acquired by gift, except that if such basis (adjusted for the period before the date of the gift as provided in § 1016) is greater than the fair market value of the property at the time of the gift, then for the purpose of determining loss the basis shall be such fair market value.

Section 1015(b) provides that, if the property was acquired after December 31, 1920, by a transfer in trust (other than by a transfer in trust by a gift, bequest, or devise), the basis shall be the same as it would be in the hands of the grantor, increased in the amount of gain or decreased in the amount of loss recognized to the grantor on the transfer.

Therefore, based solely on the facts and the representations submitted, Trust A and Trust B will determine their basis in the assets by reference to the basis of the assets in the hands of Trust under § 1015(a) or (b), and the holding periods of the assets held by Trust A and Trust B will include the period for which the assets were held by Trust.

Rulings 3, 4, and 5

Section 507(a) of the Code provides that, except as provided in Section 507(b), a private foundation may terminate its private foundation status only under the specific rules set forth in Section 507(a).

Section 507(b)(2) of the Code provides that in the case of the transfer of assets of any private foundation to another private foundation pursuant to any liquidation, merger, redemption, recapitalization, or other adjustment, organization or reorganization, the transferee foundation shall not be treated as a newly created organization.

Section 507(c) of the Code imposes an excise tax on any private foundation which voluntarily terminates its private foundation status under section 507(a)(1).

Section 507(d)(2) of the Code provides that the term substantial contributor means any person who contributed or bequeathed an aggregate amount of more than $5,000 to the private foundation, if such amount is more than 2 percent of the total contributions and bequests received by the foundation before the close of the taxable year of the foundation in which the contribution or bequest is received by the foundation from such person. In the case of a trust, the term "substantial contributor" also means the creator of the trust.

Section 4941(d)(1)(A) of the Code provides that the term “self-dealing” includes any direct or indirect sale or exchange, or leasing, between a private foundation and a disqualified person.

Section 4941(d)(1)(E) of the Code provides that the term “self-dealing” includes any direct or indirect transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a private foundation.

Section 4945 of the Code imposes an excise tax on each taxable expenditure described in section 4945(d) made by a private foundation.

Section 4945(d) of the Code defines the term “taxable expenditure” to include amounts paid or incurred by a private foundation for certain activities, for a purpose other than one specified in section 170(c)(2)(B), or as a grant to certain organizations unless the private foundation exercises expenditure responsibility with respect to such a grant.

Section 4945(d)(4) of the Code provides that a taxable expenditure includes any amount paid or incurred by a private foundation as a grant to an organization unless the private foundation exercises expenditure responsibility with respect to such grant in accordance with section 4945(h).

Sections 4946(a)(1)(A), (B), and (D) of the Code defines the term “disqualified person” with respect to a private foundation as including (among others) a substantial contributor to the private foundation (including the creator of a trust), a foundation manager (including a trustee), and a member of the family of a substantial contributor or foundation manager.

Section 4946(a)(2) of the Code provides that “substantial contributor” is defined as the term is described in section 507(d)(2).

Section 4947(a)(2) of the Code provides that for a split interest charitable trust, sections 507, 508(e), 4941, 4943, 4944, and 4945 apply as if such trust were a private foundation.

Section 4947(a)(2)(A) of the Code provides that the provisions of Section 4947(a)(2) do not apply to any amounts payable under the terms of a split interest charitable trust to income beneficiaries unless a deduction was allowed under sections 170(f)(2)(B), 642(c), 2055(e)(2)(B), or 2522(c)(2)(B).

Section 1.507-1(b)(6) of the Income Tax Regulations (“regulations”) provides, in part, that if a private foundation transfers all or part of its assets to one or more other private foundations pursuant to a transfer described in section 507(b)(2) of the Code and section 1.507-3(c), such transferor foundation will not have terminated its private foundation status under section 507(a)(1).

Section 1.507-3(a)(3) of the regulations provides, in general, that in the event of a transfer of assets described in section 507(b)(2) of the Code, any person who is a substantial contributor (within the meaning of section 507(d)(2)) with respect to the

transferor foundation shall be treated as a substantial contributor with respect to the transferee foundation.

Section 1.507-3(a)(7) of the regulations provides, in part, that, except as provided in section 1.507-3(a)(9), if the transferor has disposed of all of its assets, then during any period in which the transferor has no assets, sections 4945(d)(4) and (h) of the Code shall not apply to the transferee or the transferor with respect to any “expenditure responsibility” grants by the transferor.

Section 1.507-3(a)(9)(i) of the regulations provides that if a private foundation transfers all of its assets to one or more private foundations which are effectively controlled, directly or indirectly, by the same person or persons which effectively controlled the transferor private foundation, for purposes of Chapter 42 (section 4940 et seq.) and part II of subchapter F of Chapter 1 of the Code (sections 507 through 509) such a transferee private foundation shall be treated as if it were the transferor private foundation.

Section 1.507-3(c)(1) of the regulations provides, in pertinent part, that as used in section 507(b)(2) of the Code, the terms “other adjustment, organization, or reorganization” include any partial liquidation or any other significant disposition of assets to one or more private foundations, other than transfers for full and adequate consideration or distributions out of current income.

Section 1.507-3(c)(2)(ii) of the regulations provides that the term “significant disposition of assets” means the transfer of twenty-five percent (25%) or more of the fair market value of the net assets of the foundation at the beginning of the taxable year, which disposition may be made in a single year or in a series of related dispositions over more than one year.

Section 1.507-3(d) of the regulations provides that unless a private foundation voluntarily gives notice pursuant to section 507(a)(1) of the Code, a transfer of assets described in section 507(b)(2) will not constitute a termination of the transferor’s private foundation status under section 507(a)(1).

Section 53.4945-5(b)(7) of the foundation regulations confirms that sections 1.507-3(a)(7), 1.507-3(a)(8)(ii)(f), and 1.507-3(a)(9) of the regulations govern the extent to which the expenditure responsibility rules contained in sections 4945(d)(4) and (h) of the Code apply to transfers of assets described in section 507(b)(2).

Section 53.4945-6(b)(2) of the foundation regulations provides that expenditures for unreasonable administrative expenses, including compensation, consultant fees, and other fees for services will ordinarily be taxable expenditures under section 4945(d)(5) of the Code.

Section 53.4945-6(c)(3) of the foundation regulations states that a transfer of assets described in section 1.507-3(c)(1) of the regulations applies only to organizations described in section 501(c)(3) or "treated as so described under section 4947(a)(1)."

Section 53.4947-1(c)(1)(ii) of the foundation regulations provides that a split-interest trust is subject to the provisions of sections 507 (except as provided in section 53.4947-1(e)), 508(e) (to the extent applicable to a split-interest trust), 4941, 4943 (except as provided in section 4947(b)(3)), 4944 (except as provided in section 4947(b)(3)), and 4945 of the Code in the same manner as if such trust were a private foundation.

Section 53.4947-1(c)(2)(i) of the foundation regulations provides, in general, that under section 4947(a)(2)(A), section 4941 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), 642(c), 2055(e)(2)(B), or 2522(c)(2)(B) of the Code with respect to the income interest of any such beneficiary.

Rev. Rul. 2002-28, 2002-1 I.R.B. 941, provides, in part, that, once a private foundation distributes all of its assets to one or more other effectively controlled private foundations under a plan of dissolution, the obligation to exercise expenditure responsibility under section 4945(h) of the Code with respect to the transfers made by the transferor foundation passes from that foundation to the transferee foundation(s).

Rev. Rul. 2008-41, 2008-30 I.R.B. 170, provides guidance regarding Sections 507, 4941, 4945, and 4947 of the Code when a charitable remainder trust ("CRT") is divided into two or more separate and equal CRTs.

As a split-interest trust, Trust is treated as if it were a private foundation under section 4947(a)(2) of the Code. Thus, except as provided in section 4947(a)(2)(A) and section 53.4947-1(c)(2)(i) of the foundation regulations, it is subject to the termination provisions of section 507, as well as the provisions of sections 4941 and 4945. Under section 1.507-3(c) of the regulations, the proposed transfer of all of Trust's assets to Trust A and Trust B will constitute a significant disposition of Trust's assets because the transfer is greater than twenty-five percent (25%) of Trust's assets. The proposed transfers will not be for full and adequate consideration and will not be distributions out of current income. The transferees will both be treated as private foundations with respect to section 507 pursuant to section 4947(a)(2). Therefore, the proposed transfers are described in section 507(b)(2). A transfer of assets described in section 507(b)(2) does not constitute a termination of the transferor's private foundation status under section 507(a)(1) unless the transferor voluntarily gives notice pursuant to section 507(a)(1). Since Trust has not given notice of its intent to terminate, it retains its private foundation status and the termination tax imposed by section 507(c) will not apply. Accordingly, the division and distribution of Trust into Trust A and Trust B do not terminate Trust's status under section 507(a)(1) of the Code as a trust described in and subject to the

private foundation provisions of section 4947(a)(2), and do not result in the imposition of an excise tax under section 507(c).

As a charitable remainder unitrust under section 664(d)(2) of the Code, Trust is a split-interest trust described in section 4947(a)(2) and treated as a private foundation for purposes of section 4941. Section 4941 imposes an excise tax on acts of self-dealing. A and B are disqualified persons with respect to Trust under section 4946 as substantial contributors to Trust. However, the only interest A and B have in Trust is the right to the payment of the unitrust amount. After division of Trust, the total unitrust amount payment remains the same during the lives of A and B. Since the transferee trusts do not have survivorship provisions, when A or B dies, the remainder of each of their trusts is immediately distributed to qualified charities. Section 4947(a)(2)(A) and section 53.4947-1(c)(2) of the foundation regulations provide that section 4941 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), 642(c), 2055(e)(2)(B), or 2522(c)(2)(B) with respect to the income interest of any such beneficiary. Based on the representation that no such deduction was allowed, payments to A from Trust A and to B from Trust B as income beneficiaries will not be acts of self-dealing under section 4941 of the Code.

As a charitable remainder unitrust under section 664(d)(2) of the Code, Trust is a split-interest trust described in section 4947(a)(2) and treated as a private foundation for purposes of section 4945. Thus, an excise tax is imposed on taxable expenditures, including any amount paid or incurred by a private foundation for a non-charitable purpose. Trust A and Trust B, as charitable remainder unitrusts under section 664(d)(2) are also treated as private foundations for purposes of section 4945 under the provisions of section 4947(a)(2). However, pursuant to section 4947(a)(2)(A), amounts payable to income beneficiaries under the terms of such a CRT, are not subject to the provisions of section 4945 unless a deduction was allowed for those amounts under sections 170(f)(2)(B), 2055(e)(2)(B), or 2522(e)(2)(B). Based on the representation that no such deduction was allowed, payments to A from Trust A and to B from Trust B as income beneficiaries will not be taxable expenditures.

Trust will dispose of all of its assets through the above-described transfers to Trust A and Trust B. Since its creation, Trust has made only distributions to income beneficiaries. Trust has made no prior distributions for which expenditure responsibility is required. It follows that Trust does not have any expenditure responsibility under sections 4945(d)(4) and (h) of the Code pursuant to sections 1.507-3(a)(9) or 1.507-3(a)(7) of the regulations, which are made applicable to the expenditure responsibility rules for section 507(b)(2) transfers by section 53.4945-5(b)(7) of the foundation regulations. See also, Rev. Rul. 2002-28 and 2008-41, *supra.* The transferee trusts are not required to exercise expenditure responsibility with regard to the subject transfers.

Section 53.4945-6(b)(2) of the foundation regulations provides that expenditures for unreasonable administrative expenses will ordinarily be taxable expenditures under section 4945(d)(5). While the terms of Trust provide that reasonable administrative and legal costs may be paid by Trust, it is represented that all legal and other expenses and costs incident to the division of Trust are to be paid by A or B. Thus, Trust principal remains preserved for charitable interests and the administrative expenses of the proposed division do not constitute taxable expenditures. Accordingly, the division of Trust and the distribution of its assets to Trust A and Trust B do not constitute taxable expenditures under section 4945 of the Code.

Rulings 6 and 7

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 death.

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 he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his 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.

Section 20.2036-1(c) of the Estate Tax Regulations provides that if the decedent retained or reserved an interest or right with respect to all of the property transferred by him, the amount to be included in his gross estate under § 2036 is the value of the entire property, less only the value of any outstanding income interest which is not subject to the decedent's interest or right and which is actually being enjoyed by another person at the time of the decedent's death. If the decedent retained or reserved an interest or right with respect to a part only of the property transferred by him, the amount to be included in his gross estate under § 2036 is only a corresponding proportion of the amount described in the preceding sentence.

Section 2055(a) provides, for purposes of the tax imposed by § 2001, the value of the taxable estate shall be determined by deducting from the value of the gross estate the amount of all transfers for charitable purposes.

Section 20.2055-1(a) provides that a deduction is allowed under § 2055(a) from the gross estate of a decedent who was a citizen or resident of the United States at the time of his death for the value of property included in the decedent's gross estate and transferred by the decedent during his lifetime or by will for charitable purposes.

Section 2055(e)(2) provides, in relevant part, that where an interest in property (other than an interest described in § 170(f)(3)(B)) 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 which 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 shall be allowed under this section for the interest which passes or has passed to the person, or for the use, described in § 2055(a) unless, in the case of a remainder interest, such interest is in a trust which is a charitable remainder unitrust (described in § 664).

In the present case, A and B entered into a settlement agreement in which, in relevant part, the parties' agreed upon what percentage of the value of Trust resulted from the contribution of each and as a result A and B were each entitled to after divorce. Further, pursuant to the settlement agreement, the parties' agreed to divide Trust into Trust A and Trust B, with each trust receiving the agreed upon percentage of assets from Trust. Pursuant to the parties' agreement, Trust A will receive b percent of Trust's assets and Trust B will receive c percent of Trust's assets. Trust A benefits A and charitable organizations designated by A. Trust B benefits B and charitable organizations designated by B. The transfers from Trust to Trust A and Trust B are being made pursuant to the parties' settlement agreement, Court's conditional order, and Date 2 judgment which dissolved A and B's marriage. Accordingly, we conclude that, for purposes of § 2036, A will be treated as having transferred the property transferred to Trust A and B will be treated as having transferred the property transferred to Trust B.

A and B each retained the right to receive unitrust payments for life from their respective trusts as well as the lifetime power over his or her respective trust to substitute the charitable beneficiaries designated in the trust instrument with one or more other charitable organizations described in §§ 170(b)(1)(A), 170(c), 2055(a), and 2522(a). Accordingly, based on the facts submitted and representations made, we rule that upon the death of A, if A retains the right to receive unitrust payments for life and the power to substitute the charitable beneficiaries designated in Trust A, the value of the assets in Trust A will be includible in A's gross estate under § 2036, and A's estate will be entitled to an estate tax charitable deduction under § 2055 for the value of the assets passing to the charitable beneficiaries of Trust A. Further, we rule that upon the death of B, if B retains the right to receive unitrust payments for life and the power to substitute the charitable beneficiaries designated in Trust B, the value of the assets in Trust B will be includible in B's gross estate under § 2036, and B's estate will be entitled to an estate tax charitable deduction under § 2055 for the value of the assets passing to the charitable beneficiaries of Trust B.

Ruling 8

Section 2501(a) imposes a gift tax for each calendar year on the transfer of property by gift during the calendar year.

Section 2511 provides that the gift tax 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 2512(b) provides that where property is transferred for less than an adequate and full consideration in money or money's worth, the amount by which the value of the property exceeded the value of the consideration shall be deemed a gift.

Section 2516 provides that where a husband and wife enter into a written agreement relative to their marital and property rights and divorce occurs within the 3-year period beginning on the date 1 year before such agreement is entered into (whether or not such agreement is approved by the divorce decree), any transfers of property or interests in property made pursuant to such agreement (1) to either spouse in settlement of his or her marital or property rights, (2) to provide a reasonable allowance for the support of issue of the marriage during minority, shall be deemed to be transfers made for a full and adequate consideration in money or money's worth.

In the present case, the requirements of § 2516 are not satisfied because A and B did not enter into a written agreement relative to their marital and property rights in Trust within the time prescribed in § 2516. However, in the absence of the applicability of § 2516, the principles presented in § 25.2512-8 of the Gift Tax Regulations and Harris v. Commissioner, 340 U.S. 106 (1950) must be considered in determining the gift tax consequences of the transaction. See Rev. Rul. 79-118, 1979-1 C. B. 315.

Section 25.2512-8 states the general rule that the relinquishment of marital rights in a spouse's property does not constitute a consideration in money or money's worth. However, the rule in Harris provides an exception to this general rule. In Harris, the U.S. Supreme Court held that if a transfer in exchange for a spouse's marital rights is effectuated pursuant to a divorce decree, then the exchange is not subject to gift tax.

In the present case, pursuant to Date 2 judgment, which dissolved A and B's marriage, Court retained jurisdiction over the division of the marital property in Trust. Subsequently, A and B entered into a settlement agreement in which they agreed upon what percentage of marital property in Trust each party was entitled to following the divorce and they also agreed to divide Trust into Trust A and Trust B. Based upon the percentages agreed upon by the parties, Trust A, which benefits A and charitable beneficiaries, will receive b percent of Trust's assets and Trust B, which benefits B and charitable beneficiaries, will receive c percent of Trust's assets. The parties petitioned Court for an order approving the division of Trust, the modification of Trust, and the distribution of the assets of Trust to Trust A and Trust B, in accordance with the parties' settlement agreement. Court issued a conditional order approving the division,

modification, and distribution of Trust. Thus, the transfer of the assets of Trust into Trust A and Trust B will be effectuated by Court's conditional order, which was issued pursuant to Date 2 judgment, in which Court retained jurisdiction over any issues relating to A and B's divorce. Therefore, the requirements under Harris are satisfied in this case. Accordingly, based on the facts submitted and representations made, we rule that the division of Trust and the distribution of Trust assets to Trust A and Trust B will not result in any taxable gifts by A or B under § 2501.

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. Furthermore, the estate tax rulings in this letter apply only to the extent that the relevant sections of the Internal Revenue Code are in effect during the period at issue.

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.

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.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to Trust's authorized representative.

Sincerely,

/s/

Faith P. Colson
Senior Counsel, Branch 1
Associate Chief Counsel
(Passthroughs & Special Industries)

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