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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

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, ID No.
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Refer Reply To:
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PLR-146117-06

Date:
March 29, 2007

Trust =

A =

B =

D1 =

D2 =

D3

x =

State =

Dear :

This responds to a letter dated September 15, 2006, submitted on behalf of Trust by Trust's authorized representative, requesting rulings concerning the proposed division of Trust into two separate trusts, Trust A and Trust B.

A and B created Trust on D1. Trust was funded with community property. Trust was drafted to qualify as a charitable remainder unitrust under § 664. Trust is irrevocable and governed by the laws of State, a community property state.

Trust provides that A and B receive, in equal monthly installments, an amount equal to the smaller of (i) Trust income for the year, and (ii) x% of the net fair market value of Trust assets valued as of the first business day of the tax year. In the event that the Trust income for the year exceeds the fixed percentage amount, then an additional payment of such excess income shall be made to A and B; provided, however, that said additional payment does not exceed the difference between (i) the aggregate of the fixed percentage amounts for all prior years, and (ii) the aggregate of the unitrust payments made by the Trust in all prior years. Any Trust income that exceeds the sum of the fixed percentage amount for such year and any deficiency payable shall be added to principal. Payments from the Trust are to continue as long as A or B is alive. Upon the death of the second spouse to die, Trust corpus is to be distributed to specified charities. A and B reserve the power to change the charitable remainder beneficiary so long as said beneficiary is a charitable organization.

On D3, Court entered a judgment dissolving the marriage of A and B. Prior to the marital dissolution, on D2, A and B entered into a Stipulation and Order Regarding Bifurcation and Severance of Joint Tenancies (Stipulation) relative to their marital and property rights. By the terms of the Stipulation, jurisdiction was reserved by the court to oversee the division of property between A and B.

Pursuant to the terms of the Stipulation, the parties propose to divide Trust into two separate trusts, Trust A and Trust B, each of which is intended to qualify as a charitable remainder unitrust under § 664(d)(2). As proposed, there will be a pro rata division of all the assets in the Trust, with 50% of each asset being transferred into each of Trust A and Trust B. A will be the sole trustee and income beneficiary of Trust A and B will be the sole trustee and income beneficiary of Trust B. Payments will be made to the beneficiaries from each trust in an amount equal to the lesser of (i) the income of the trust for the year, or (ii) x% of the net fair market value of trust assets measured as of the first day of the tax year. In the event that there is any excess income in any year in Trust A or Trust B, then an additional payment of such excess income shall be made to the beneficiary; provided, however, that said additional payment does not exceed the difference between (i) the aggregate of the fixed percentage amounts for all prior years allocable to the beneficiary, and (ii) the aggregate of the unitrust payments made by Trust and the new trust in all prior years to the beneficiary.

After the division A and B will receive the same amounts in the aggregate they would have received before the division. Trusts A and B will make payments to their respective income beneficiary for each beneficiary's lifetime. Neither A nor B will retain a survivorship interest in the other's trust. On termination of each trust, on the death of the income beneficiary, the trustee shall distribute the remaining principal and income to the designated charitable remainder beneficiaries. A and B reserve the power to change the charitable remainder beneficiary of their respective trusts.

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 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 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.

Based solely on the facts and representations submitted, we conclude that 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.

Ruling 2

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

Section 2511(a) provides that the gift tax applies 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, or (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, on D2, A and B entered into Stipulation relative to their marital and property rights. On D3, A and B's divorce became final under a judgment of dissolution. The divorce occurred within a 3-year period beginning on the date 1 year before the Stipulation was entered into. Accordingly, based on the facts submitted and the representations made, we conclude that the transfer of property interests in Trust upon its division into Trust A and Trust B made pursuant to the Stipulation will be deemed to be transfers made for full and adequate consideration in money or money's worth and, therefore, will not be subject to gift tax as to A or B.

Ruling 3

Section 61(a)(3) provides that gross income includes gains derived from dealings in property.

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

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 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 Association v. Commissioner*, 499 U.S. 554 (1991). A material difference exists when the exchanged properties embody legal entitlements different in kind or extent or if they confer different rights and powers. *Id.* at 565.

The pro rata division or partition of an asset is a nontaxable event for purposes of §§ 61(a)(3) and 1001. For instance, a partition of jointly owned property is not a sale or other disposition of property where the co-owners of the joint property sever their joint interests, but do not acquire a new or additional interest as a result of the transaction. Thus, neither gain nor loss is realized on a partition. *See* Rev. Rul. 56-437, 1956-2 C.B. 507.

Here, A and B together currently receive annual Trust payments equal to x% of the net fair market value of the Trust assets. Under the facts of this case, the Trust will be divided pro rata into two equal charitable remainder unitrusts, Trust A and Trust B, with 50% of each asset going to Trust A, and 50% of each asset going to Trust B. A will be the sole income beneficiary and trustee of Trust A, and B will be the sole income beneficiary and trustee of Trust B. A and B each will receive payments of x% of the net fair market value of his or her respective trust. Accordingly, it is our conclusion that the division of the assets in the Trust and the distribution of those assets to Trust A and Trust B will be equal in kind and not give rise to gain or loss under §§ 61(a)(3) and 1001. Thus, the division of the Trust will not result in taxable income to A or B.

Rulings 4 through 8

Under § 4947(a)(2), § 507 applies to certain "split interest" trusts (trusts with both charitable and non-charitable beneficiaries) as if they were private foundations. Accordingly, since Trust, Trust A, and Trust B are split-interest trusts, they are subject to the rules of §§ 507, 4941, and 4945.

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

Section 507(c) imposes a termination tax equal to certain defined amounts, which are generally the lower of the "aggregate tax benefit" resulting from the tax-exempt status or the fair market value of the assets.

Section 507(b)(2) 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 1.507-3(c)(1) provides, in part, that as used in § 507(b)(2), the term "other adjustment, organization or reorganization" shall include any partial liquidation or any other "significant disposition of assets" to one or more private foundations.

Section 1.507-3(c)(2)(ii) provides that the term "significant disposition of assets" means the transfer of 25 percent or more of the net assets of the foundation at the beginning of the 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(a)(1) and (2)(i) provides in substance that in the transfer of assets from one private foundation to one or more private foundations in a § 507(b)(2) transfer, each transferee private foundation shall not be treated as a newly created organization, but shall succeed to the transferor's aggregate tax benefit within the meaning of § 507(d) in proportion to the assets transferred to each.

Section 1.507-3(a)(4) provides that if a private foundation incurs liability for one or more of the taxes imposed under Chapter 42 (or any penalty resulting therefrom) prior to, or as a result of, making a transfer of assets described in § 507(b)(2) to one or more private foundations, in any case where transferee liability applies each transferee foundation shall be treated as receiving the transferred assets subject to such liability to the extent that the transferor foundation does not satisfy such liability.

Under section 1.507-3(a)(9)(i), if a private foundation transfers all of its assets to one or more private foundations effectively controlled by the same persons that effectively control the transferor, the transferee foundations are treated as though they were the transferor for purposes of § 4945.

Section 4941(a) imposes an excise tax on each act of self-dealing between a disqualified person and a private foundation.

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

Section 4945 imposes an excise tax on a private foundation’s making of any taxable expenditure under § 4945(d). Under § 4945(d)(4), the term “taxable expenditure” includes a grant to a private foundation unless the grantor exercises expenditure responsibility in accordance with § 4945(h).

Section 4946(a) provides the term “disqualified person” with respect to a private foundation includes a substantial contributor to the foundation (including the creator of a trust), the foundation manager (including a trustee) and the members of the family of those individuals.

Section 53.4945-6(b)(2) of the Foundation and Similar Excise Taxes Regulations provides that expenditures for unreasonable administrative expenses, including compensation, consultant fees, and other fees for services rendered, will ordinarily be taxable expenditures under § 4945(d)(5) unless the foundation can demonstrate that such expenses were paid in the good faith belief that they were reasonable and that the payment or incurrence of such expenses in such amounts was consistent with ordinary business care and prudence.

Rev. Rul. 2002-28, 2002-1 C.B. 941 provides that when a private foundation transfers all of its assets to other foundations in a § 507(b)(2) transfer there are no expenditure responsibility requirements under § 4945(d)(4) or (h) with respect to the transfers because the transferee foundations are treated as the transferor.

Trust is a split-interest trust described in § 4947(a)(2) and, therefore, treated generally as if it were a private foundation and subject to § 507 termination rules. The proposed transfer of 100 percent of Trust's assets, under the prevailing divorce proceedings, to Trust A and Trust B will qualify as transfers meeting the requirements of § 1.507-3(c)(1) and (2)(ii).

Accordingly, under § 1.507-3(a)(1), Trust A and Trust B will not be treated as newly created private foundations. Further, these trusts shall, under § 1.507-3(a)(2)(i), succeed to the aggregate tax benefit of the transferor organization, Trust, on a pro rata basis determined by the fair market value of the assets. Under § 1.507-3(a)(4), the assets will be subject to any liability that Trust may have under Chapter 42.

A and B are disqualified persons with respect to Trust. The only interest that either A or B had in Trust was the payment of the unitrust amount under the provisions of § 664(d)(2). A and B have exchanged a unitrust (and a contingent survivor's unitrust interest) payment in Trust for a full unitrust payment in a trust having fewer assets, namely 50 percent of the assets of Trust prior to its division. Thus, they are in the aggregate, likely to receive the same unitrust payment as before. Therefore, no self-dealing transaction occurs under § 4941.

Since the transferee trusts are treated as the transferor, Trust, rather than recipients of expenditure responsibility grants, there are no expenditure responsibility requirements that must be exercised by Trust under § 4945(d)(4) or (h) with respect to the transfers. *See* Rev. Rul. 2002-28. Under § 53.4945-6(b)(2), legal and other expenses incurred by Trust to implement the division of its assets, assuming such expenses are incurred in the good faith belief that they are reasonable and consistent with ordinary care and prudence, will not constitute taxable expenditures under § 4945.

Therefore, if reasonable in amount, payment from Trust's assets of legal fees and other expenditures incurred by Trust to effectuate the division of Trust will nor constitute an act of self-dealing under § 4941, nor will it constitute taxable expenditures under § 4945.

Accordingly, we rule as follows:

1. The proposed division of Trust into Trust A and Trust B will not terminate Trust's status as a trust described in, and subject to, the private foundation provisions of § 4947(a)(2), and will not result in the imposition of an excise tax under § 507(c).

2. Trust A and Trust B will not be treated as newly created organizations. The aggregate tax benefits of Trust under § 507(d) will carry over to Trust A and Trust B in proportion to the amount of Trust assets transferred to Trust A and Trust B, subject to any liability the Trust has under Chapter 42 of the Code to the extent not already satisfied by Trust.

3. The proposed division of Trust into Trust A and Trust B will not be an act of self-dealing under § 4941(d).

4. The proposed division of Trust into Trust A and Trust B will not be a taxable expenditure under § 4945. There is no expenditure responsibility requirements that must be exercised by Trust under § 4945(d)(4) or (h) with respect to the transfers to Trust A or Trust B.

5. If reasonable in amount, payment of the legal and other expenditures incurred by Trust to effect the proposed division out of the assets of Trust will not constitute an act of self-dealing under § 4941, or constitute a taxable expenditure under § 4945.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts of the transaction described above under any other provision of the Code, in particular § 61. We express no opinion on whether Trust otherwise qualifies as a charitable remainder trust under § 664 or whether the separate trusts each will otherwise qualify as charitable remainder trusts under § 664.

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

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,

Bradford R. Poston
Senior Counsel, Branch 2
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures: 2
Copy of this letter
Copy for § 6110 purposes

cc: