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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
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Person To Contact:
, ID No.
Telephone Number:

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Date:
September 14, 2007

Trust A =
Trust B =
Taxpayer =
Year 1 =
Year 2 =
Spouse =
State =
a =
Company 1 =
b =
c =
Company 2 =

Dear :

This responds to your representative's letter dated August 30, 2006, and subsequent correspondence, requesting certain rulings concerning the proposed assignment of your respective unitrust interests in Trust A and Trust B to the charitable remainder beneficiary of each trust.

FACTS

The facts and representations submitted are summarized as follows.

Taxpayer created Trust A in Year 1 and Trust B in Year 2. Each trust as drafted was intended to qualify as a charitable remainder unitrust under § 664(d)(2) of the Internal

Revenue Code ("Code"). Taxpayer and Spouse are the original and current trustees of each trust.

Under the terms of both Trust A and Trust B, Taxpayer is to receive a 5 percent unitrust amount for his life, and upon his death, Spouse is to receive a 5 percent unitrust amount for her life. In each trust, Taxpayer retains the power to revoke Spouse's successor unitrust interest. Trust A and Trust B currently provide that the remainder beneficiary of each respective trust will be one or more charitable organizations described in §§ 170(b)(1)(A), 170(c), 2055(a), and 2522(a) of the Code, as shall be designated by Taxpayer. Trust A and Trust B further provide that to the extent Taxpayer fails to effectively designate the charitable remainderman, the trustees of the respective trust, in their sole discretion and at any time, will select as the remainder beneficiary one or more organizations described in §§ 170(b)(1)(A), 170(c), 2055(a), and 2522(a) of the Code. Both Trust A and Trust B provide that to the extent the trustees of each respective trust shall not have effectively exercised any discretion they have to appoint the final trust estate, the final trust estate shall be paid to State Community Trust.

Trust A and Trust B provide that State law governs the operation of each respective trust. It is further represented that each trust includes those provisions necessary for the trust to otherwise qualify as a charitable remainder unitrust within the meaning of § 664(d)(2) of the Code.

Trust A was funded with a shares of Company 1 common stock. Trust B was funded with b shares of Company 1 common stock and c shares of Company 2 common stock. The current assets of Trust A and Trust B consist of cash, money market accounts, and marketable securities.

Taxpayer and Spouse propose to assign their respective unitrust interests in Trust A and Trust B to a designated remainder beneficiary of each respective Trust. Taxpayer represents that under State law, if the charitable remainderman of a trust possesses all of the interests in a trust, the interests will merge and thereby entitle the charitable beneficiary to all of the assets of the trust. In order to accomplish this result with respect to each trust, Taxpayer and Spouse, in their individual capacities and as the trustees of Trust A and Trust B, propose to take the following actions, in the following order.

First, pursuant to State law and with the consent of the office of the attorney general of State, Trust A and Trust B will be amended to provide Taxpayer and Spouse the authority to assign their respective unitrust interests to an organization described in §§ 170(b)(1)(A), 170(c), 2055(a), and 2522(a) of the Code. Second, pursuant to State law, Taxpayer will release his power to revoke Spouse's successor unitrust interest in each trust. Third, Taxpayer will release his testamentary power to designate the charitable remainder beneficiary of each trust. Fourth, the trustees of each trust will

designate an organization described in §§ 170(b)(1)(A), 170(c), 2055(a), and 2522(a) of the Code as the charitable remainderman of each respective trust pursuant to authority granted in the trust instruments. Fifth, the trustees of each trust will prospectively release their authority to designate a charitable remainder beneficiary under the trust agreements. Finally, Taxpayer and Spouse will each assign their respective unitrust interests to the charitable remainder beneficiary of each respective trust, as previously designated by the trustees of each trust.

Taxpayer represents that, upon the completion of the actions outlined above, the unitrust interest and the remainder interest of each trust will merge under State law. Thereafter, the trustees of Trust A will distribute the entire principal and income of Trust A to the organization described in §§ 170(b)(1)(A), 170(c), 2055(a), and 2522(a) of the Code that was previously designated by the trustees, whereupon Trust A will terminate. Similarly, the trustees of Trust B will distribute the entire principal and income of Trust B to the organization described in §§ 170(b)(1)(A), 170(c), 2055(a), and 2522(a) of the Code that was previously designated by the trustees, whereupon Trust B will terminate.

Taxpayer and Spouse have obtained a letter from the office of the attorney general for State stating there is no objection to the proposal of Taxpayer and Spouse to accelerate the interests of the charitable remainder beneficiaries and there is no objection to the manner used to effectuate the acceleration of the charitable remainder beneficiaries' interests.

Taxpayer represents that he did not divide his interest in the property originally transferred to Trust A and Trust B to avoid the partial interest rules.

You have requested the following rulings with regard to the proposed actions that are above described.

1. The reformation of Trust A and Trust B to provide Taxpayer and Spouse the authority to assign their respective unitrust interests will not affect the status of each trust as a charitable remainder unitrust within the meaning of § 664(d)(2) of the Code.

2. For the year or years in which Taxpayer and Spouse transfer their respective unitrust interests in Trust A and Trust B, Taxpayer and Spouse will each be entitled to charitable income tax deductions under § 170(a)(1) of the Code to the extent of the present value of the unitrust interests transferred as of the date of each transfer, subject to any applicable limitations under § 170 or any other section of the Code.

3. For the year or years in which Taxpayer and Spouse transfer their respective unitrust interests in Trust A and Trust B, Taxpayer and Spouse will each be entitled to charitable gift tax deductions under § 2522 of the Code to the extent of the present value of the unitrust interests transferred as of the date of each transfer, calculated as

provided in §§ 664 and 7520 of the Code and § 25.2522(c)-3(d)(2)(v) of the Gift Tax Regulations and § 1.664-4(e) of the Income Tax Regulations.

4. Upon Taxpayer's release of his retained power to revoke the successor unitrust interest of Spouse in Trust A and Trust B, the gift of the successor unitrust interests will qualify for the gift tax marital deduction under § 2523(g) of the Code.

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 the remainder interest in the property is at least 10 percent of the net fair market value of the 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.

In this case, the trustees of Trust A and Trust B propose to modify each trust to add a provision giving Taxpayer and Spouse the authority to assign their respective unitrust

interests to an organization described in §§ 170(b)(1)(A), 170(c), 2055(a), and 2522(a). The office of the attorney general of State has oversight responsibilities with respect to charitable trusts and the attorney general has affirmed that it has no objection to modifying Trust A and Trust B to allow for the assignment of the unitrust interests.

Based on the facts presented and representations made, we conclude that the proposed modification to Trust A and Trust B will not affect the respective trust's status 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(c)(2) provides that the term "charitable contribution" means a contribution or gift to or for the use of, as pertinent here, a corporation, trust, or community chest, fund, or foundation:

(1) created or organized in the United States, or in any possession thereof, or under the law of the United States, any state, the District of Columbia, or any possession of the United States;
(2) organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes . . . ;
(3) no part of the net earnings of which inures to the benefit of any private shareholder or individual; and
(4) that is not disqualified for a tax exemption under § 501(c)(3) of the Code by reason of attempting to influence legislation, and which does not participate in, or intervene in, any political campaign on behalf of (or in opposition to) any candidate for public office.

Section 170(f)(2) provides that no deduction is allowed under § 170 for the value of a remainder interest unless the trust is a charitable remainder annuity trust or charitable remainder unitrust described in § 664.

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

In Situation 1 in Rev. Rul. 86-60, 1986-1 C.B. 302, the Service considered whether a donation qualifies for the charitable contribution deduction under § 170 if a taxpayer, who is the grantor and life beneficiary of a charitable remainder annuity trust, donates his annuity interest in the charitable remainder annuity trust to the remainder beneficiary of the trust. In 1980, A had created a charitable remainder annuity trust described in § 664(d)(1). A retained an annuity interest in the charitable remainder annuity trust 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 charitable remainder annuity trust to X. Rev. Rul. 86-60 concludes, based on §§ 1.170A-6(a)(2) and 1.170A-7(a)(2)(i), that the gift by A of A's retained life annuity in the charitable remainder annuity trust to the remainder beneficiary qualifies for a charitable contribution deduction under § 170.

The proposed gift by Taxpayer and Spouse of their respective unitrust interests in Trust A and Trust B is analogous to the gift in Situation 1 in Rev. Rul. 86-60. As was the case for the taxpayer in Rev. Rul. 86-60, Taxpayer and Spouse will each qualify for a charitable contribution deduction under § 170(c). Therefore, we rule that for the year or years in which Taxpayer and Spouse transfer their respective unitrust interests in Trust A and Trust B to an organization described in §§ 170(b)(1)(A), 170(c), 2055(a), and 2522(a), Taxpayer and Spouse will each be entitled to charitable income tax deductions under § 170(a)(1) for the value of their respective unitrust interests in Trust A and Trust B. The deductions 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 25.2512-5(d) generally provides that the present value is determined under § 25.2512-5(d)(2) and by use of standard or special § 7520 actuarial factors. Section 25.2512-5(d)(2)(i) provides, in pertinent part, that the fair market value of a remainder interest in a charitable remainder unitrust is its present value determined under § 1.664-4(e) of this chapter. The fair market value of a life interest in a charitable remainder unitrust is the fair market value of the property as of the date of transfer less the fair market value of the remainder interest, determined under § 1.664-4(e)(5).

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.

In Situation 2 of Rev. Rul. 86-60, supra, A created a charitable remainder annuity trust, retaining the annuity interest for life. Upon A's death, the annuity interest was to be paid to B, and upon the death of the survivor of A and B, the remainder would pass to X, a qualified charitable organization. A and B subsequently assigned their interests to the

charitable remainder beneficiary. The ruling concludes, inter alia, that the transfers by A and B to the charitable remainder beneficiary qualify for the gift tax charitable deduction under § 2522 because, following the transfers, A and B did not retain any interest in the trust and, at no time, had A or B made a transfer of an interest in the trust for a private purpose.

The facts in this case are similar to those described in Situation 2 of Rev. Rul. 86-60. The trustees of Trust A and Trust B will designate a charitable remainder beneficiary for each trust and then prospectively release their authority to further select or designate a charitable remainder beneficiary of Trust A and Trust B. Thereafter, Taxpayer and Spouse will assign their entire respective unitrust interests in Trust A and Trust B to the designated charitable remainder beneficiary of each trust. After the assignments, neither Taxpayer nor Spouse will retain any interest in any of the trusts. Taxpayer represents that because each charitable remainder beneficiary designated by the trustees will possess each interest in the trust of which it is a beneficiary, the interests will merge under State law.

Based solely on the facts submitted and the representations made, including the representation that Trust A and Trust B each qualify as a charitable remainder unitrust as described in § 664(d)(2), we conclude that for the year in which Taxpayer and Spouse each assign their respective unitrust interests in Trust A and Trust B to the respective beneficiary as designated by the trustees of each trust, Taxpayer and Spouse will be entitled to gift tax charitable deductions under § 2522(a) to the extent of the present value of their respective unitrust interests transferred as of the date of each assignment. The deductions will be calculated as provided in §§ 664 and 7520 and § 25.2522(c)-3(d)(2)(v) and § 1.664-4(e).

RULING 4

Section 25.2511-2(c) provides that a gift is incomplete if the donor reserves the power to name new beneficiaries or to change the interests of the beneficiaries as between themselves unless the power is a fiduciary power limited by a fixed or ascertainable standard.

Section 2523(a) provides that when a donor transfers during the calendar year by gift an interest in property to a donee who at the time of the gift is the donor's spouse, there shall be allowed as a deduction in computing taxable gifts for the calendar year an amount with respect to such interest equal to its value.

Under § 2523(b), the deduction under § 2523(a) is disallowed when, on the lapse of time, on the occurrence of an event or contingency, or on the failure of an event or contingency to occur, the interest transferred to the spouse will terminate or fail if the donor retains in himself an interest in such property, and if by reason of such retention

the donor may possess or enjoy any part of the property after such termination or failure of the interest transferred to the donee spouse.

Section 2523(g) provides that if, after the transfer, the donee spouse is the only non-charitable beneficiary (other than the donor) of a qualified remainder trust, § 2523(b) shall not apply to the interest in such trust which is transferred to the donee spouse. Under § 2056(b)(8)(B)(ii), the term "qualified charitable remainder trust" means a charitable remainder annuity trust or charitable remainder unitrust (described in § 664).

Section 25.2523(g)-1(a)(3) provides that the donee spouse's interest need not be an interest for life to qualify for a marital deduction under § 2523(g).

Section 25.2523(g)-1(a)(4) provides that a deduction under § 2523(g) is allowed even if the transfer to the donee is conditioned on the donee spouse's payment of state death taxes, if any, attributable to the qualified charitable remainder trust.

In both Trust A and Trust B, Taxpayer retains the power to revoke by will Spouse's successor unitrust interest in each trust. During the joint lives of Taxpayer and Spouse, Spouse is the only non-charitable beneficiary other than Taxpayer. When Taxpayer releases his right to revoke Spouse's successor unitrust interest in each of the trusts, the gifts to Spouse become complete. Accordingly, Spouse's survivorship interest in both Trust A and Trust B will qualify for the gift tax marital deduction under § 2523(g).

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

In accordance with the power of attorney on file with this office, we are sending a copy of this letter to your authorized representative.

The ruling contained in this letter is based upon information and representations submitted by the taxpayers and accompanied by a penalty of perjury statement executed by the appropriate parties. While this office has not verified any of the material submitted in support of the request for a ruling, it is subject to verification on examination.

Sincerely,

James F. Hogan
Senior Technician Reviewer (Branch 4)
Passthroughs and Special Industries