

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Refer Reply To:  
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Date:  
March 16, 2010

Legend:

X =

Trust =

Date 1 =

Date 2 =

State =

a =

b =

Dear :

This letter responds to a letter dated , and subsequent correspondence, submitted on behalf of the Trust by its authorized representative, requesting rulings under sections 664 and 4941 of the Internal Revenue Code (“Code”).

**FACTS**

The information submitted states that on Date 1, X created Trust with the intention that Trust qualify as a charitable remainder unitrust (CRUT) described in

section 664(d)(2) of the Code. The terms of Trust provide that the trustee of Trust shall pay an annual fixed percentage unitrust amount to X. After X's death, the trustee is to distribute the then remaining trust assets to organizations represented as being organizations described in sections 170(c), 2055(a), and 2522(a).

X created Trust with the assistance of his attorney. However, due to a scrivener's error, an incorrect unitrust percentage was originally included in the Trust instrument. X had intended for Trust to pay a unitrust amount of a percent, rather than b percent, the amount originally provided for in the Trust instrument. On Date 2, a State court, after giving notice to the charities and the State Attorney General, entered an order correcting the scrivener's error and amending retroactively the unitrust amount, conditioned upon a ruling by the Service that Trust will be treated as a valid CRUT since Date 1. X represents that X has returned the excess amounts and all accrued interest to Trust consistent with the treatment of Trust as a CRUT with a stated a percent unitrust amount since Date 1. X also represents that X has not, and will not, claim any additional charitable deduction as a result of the retroactive amendment of Trust. All parties to the Trust have consented in writing to the reformation.

## LAW AND ANALYSIS

### RULING 1

Section 664(d)(2) defines a CRUT for the purposes of section 664 as 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 section 664(d)(2)(A) and other than qualified gratuitous transfers described in section 664(d)(2)(C) may be paid to or for the life or lives of such individual or individuals, (C) following the termination of the payments described in section 664(d)(2)(A), the remainder interest in the trust is to be transferred to, or for the use of, an organization described in section 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 section 664(g)(4)), all or part of such securities are to be transferred to an employee stock ownership plan (as defined in section 4975(e)(7)) in a gratuitous transfer (as defined by section 664(g)), and (D) with respect to each contribution of property to the trust, the value (determined under section 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) of the Income Tax Regulations 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 section 170(c). The CRUT may not be subject to a power to invade, alter, amend, or revoke for the beneficial use of a person other than an organization described in section 170(c).

## RULING 2

Section 4941(a)(1) of the Code imposes an excise tax on each act of self-dealing between a disqualified person and a private foundation.

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

Section 4946(a) of the Code defines the term “disqualified person” with respect to a private foundation as including a substantial contributor to the foundation (including the creator of a trust).

Section 4947(a)(2) of the Code provides, in pertinent part, that in the case of a trust which is not exempt from tax under section 501(a), not all of the unexpired interests of which are devoted to charitable purposes, and which has amounts in trust for which a charitable deduction was allowed, section 4941 and other provisions apply as if such trust were a private foundation.

Section 53.4941(d)-(2)(f)(2) of the Foundation and Similar Excise Tax Regulations (the “regulations”) provides that an incidental or tenuous benefit to a disqualified person does not constitute an act of self-dealing.

Sections 53.4947-1(c)(2) and 53.4947-1(c)(2)(ii), Example (1), of the regulations indicate, in pertinent part, that the payment of income under the terms of the trust by a charitable remainder unitrust to its individual income beneficiaries do not result in any tax on self-dealing under section 4941 of the Code.

The analysis is two-fold in that we must first delve into whether the self-dealing rules of Chapter 42 of the Code apply to X in his role as income beneficiary. We must also determine if there are any self-dealing issues regarding whether X, as a substantial contributor, is involved in any self-dealing transactions with regard to the Trust.

As a charitable remainder unitrust under section 664(d)(2) of the Code, Trust is considered to be a split-interest trust as described in section 4947(a)(2). By virtue of being described in section 4947(a)(2), Trust is subject to the provisions of section 4941, which imposes an excise tax on acts of self dealing. The involvement of disqualified persons in certain transactions with Trust constitutes self-dealing under section 4941. Since X is a substantial contributor to Trust under section 4946, he is considered to be a disqualified person with respect to Trust. However, under section 4947(a)(2) of the

Code, the self-dealing rules of section 4941 do not apply to any amounts payable under the terms of a split-interest trust to income beneficiaries as long as no deduction was allowed for such income interest under section 170(f)(2)(B), 20555(e)(2)(B), or 2522(e)(2)(B) with respect to the income interest of any such beneficiary. Trust represents that no deduction, under the above Code sections, was taken by X with respect to any amounts of income payable to them by Trust. As a result, the self-dealing rules of section 4941 do not apply to X as income beneficiary.

Regarding whether X as a substantial contributor is engaged in self-dealing under section 4941 of the Code, the circumstances presented above indicate that there is no act of self-dealing since we are satisfied that the signatory to Trust intended to create a trust that qualified as a CRUT. X received the use of the funds for a period due to a verified mistake rather than a deliberate act of self-dealing, and has repaid the funds with adequate interest.

## CONCLUSION

### RULING 1

Based solely on the facts and representations submitted, we conclude that Trust will be treated as a valid CRUT described in section 664(d)(2) since Date 1.

### RULING 2

Based solely on the facts and representations submitted, we rule that the since the Trust is qualified as a CRUT under section 664 (d)(2) of the Code, then the reformation of the Trust, and the resulting overpayment to X which has subsequently been repaid, does not constitute self-dealing under section 4941.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Code.

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

Pursuant to the power of attorney on file, a copy of this letter is being sent to X's authorized representatives.

Sincerely,

*/s/*

David R. Haglund  
Chief, Branch 1  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

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

cc: