Number: **201040021**
Release Date: 10/8/2010

Date: July 13, 2010

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Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number: XXXXXX

Uniform Issue List:
4947.02-00

Legend:
A = XXXXXX
B = XXXXXX
D = XXXXXX

w = XXXXXX
x = XXXXXX
y = XXXXXX

Dear :

This is in response to your request for a ruling that the return of assets by you to A and B will not generate taxes or penalties under sections 507, 4941, or 4945 of the Internal Revenue Code (the "Code").

FACTS

On w, A and B executed a trust agreement creating you and conveyed to you x shares of stock. The trust agreement provides for an annuity payment of seven percent of the net fair market value of your assets as of w to be paid to A and B during their lifetimes. Upon the death of A and B, the trust agreement provides that all of your remaining principal and income is to be distributed to D. Annuity payments were made by you to A and B on a quarterly basis in the years 20XX through 20XX. A partial payment was made by you in 20XX. A and B claimed a charitable contribution deduction for the present value of the remainder interest in the stock in 20XX, but, because A and B suffered a loss in that year, the deduction was carried over to 20XX and 20XX. On your behalf, your trustee filed Form 1041-A, U.S. Information Return Trust

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Accumulation of Charitable Amounts and Form 5227, Split Interest Trust Information Return for the years 20XX through 20XX. Your trustee also filed the corresponding state tax returns.

In y, your state's franchise tax board requested that your trustee provide a statement showing a computation of the present value of D's remainder interest. Your trustee obtained calculations of the charitable remainder at a payout rate of seven percent and a payout rate of five percent. Both calculations showed that D's remainder interest had a negative value. In y, A, B, D, and your trustee executed a rescission agreement that was subsequently approved by your state's office of the attorney general. That agreement treats you as a trust that was void *ab initio*. As a result of this agreement, your assets will be returned to A and B. You represent that A and B filed amended tax returns withdrawing their charitable contribution deductions and paid all federal and state income taxes, including any interest and penalties, due pursuant to those amended returns. You will file amended returns after this ruling has been issued.

RULINGS REQUESTED

You have requested the following rulings:

1. The return of assets by you to A and B will not constitute an act of self dealing and the trustee will not be liable under section 4941 of the Code for such action.

2. The return of assets by you to A and B under the facts set forth above will not constitute a taxable expenditure and the trustee will not be liable under section 4945 of the Code for such actions.

3. The return of assets by you to A and B, will not subject you to the tax on termination of private foundation status imposed by section 507 of the Code and the trustee will not be liable for taxes under that section.

LAW

Section 170(f)(2) of the Code states that, in the case of property transferred in trust, no deduction will be allowed for the value of a contribution of a remainder interest unless the trust is a charitable remainder annuity trust or a charitable remainder unitrust, as those trusts are described in section 664, or a pooled income fund described in section 642(c)(5).

Section 507(a) of the Code provides that, except as provided in subsection (b), the status of any organization as a private foundation shall be terminated only if--(1) such organization notifies the Secretary (at such time and in such manner as the Secretary may by regulations prescribe) of its intent to accomplish such termination, or (2) (A) with respect to such organization, there have been either willful repeated acts (or failures to act), or a willful and flagrant act (or failure to act), giving rise to liability for tax under chapter 42, and (B) the Secretary notifies such organization that, by reason of subparagraph (A), such organization is liable for the tax imposed by subsection (c),and either such organization pays the tax imposed by subsection (c) (or any portion not abated under subsection (g) or the entire amount of such tax is abated under subsection (g).

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Section 664(d)(1)(D) of the Code states that a charitable remainder annuity trust must have a remainder interest that has a value of at least ten percent of the initial fair market value of all the property placed into trust.

Section 4941(d) of the Code provides that "self-dealing" means any direct or indirect-- (A) sale or exchange, or leasing, of property between a private foundation and a disqualified person; (B) lending of money or other extension of credit between a private foundation and a disqualified person; (C) furnishing of goods, services, or facilities between a private foundation and a disqualified person; (D) payment of compensation (or payment or reimbursement of expenses) by a private foundation to a disqualified person; (E) transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a private foundation; and (F) agreement by a private foundation to make any payment of money or other property to a government official (as defined in section 4946(c)), other than an agreement to employ such individual for any period after the termination of his government service if such individual is terminating his government service within a 90-day period.

Section 4945 of the Code states that for purposes of this section, the term "taxable expenditure" means any amount paid or incurred by a private foundation--(1) to carry on propaganda, or otherwise to attempt, to influence legislation, within the meaning of subsection (e), (2) except as provided in subsection (f), to influence the outcome of any specific public election, or to carry on, directly or indirectly, any voter registration drive, (3) as a grant to an individual for travel, study, or other similar purposes by such individual, unless such grant satisfies the requirements of subsection (g), (4) as a grant to an organization unless-- (A) such organization--(i) is described in paragraph (1) or (2) of section 509(a), (ii) is an organization described in section 509(a)(3) (other than an organization described in clause (i) or (ii) of section 4942(g)(4)(A)), or (iii) is an exempt operating foundation (as defined in section 4940(d)(2)), or (B) the private foundation exercises expenditure responsibility with respect to such grant in accordance with subsection (h), or (5) for any purpose other than one specified in section 170(c)(2)(B).

Section 4947(a)(2) of the Code provides that in the case of a trust which is not exempt from tax under section 501(a), not all of the unexpired interests in which are devoted to one or more of the purposes described in section 170(c)(2)(B), and which has amounts in trust for which a deduction was allowed under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522, section 507 (relating to termination of private foundation status), section 508(e) (relating to governing instruments) to the extent applicable to a trust described in this paragraph, section 4941 (relating to taxes on self-dealing), section 4943 (relating to taxes on excess business holdings) except as provided in subsection (b)(3), section 4944 (relating to investments which jeopardize charitable purpose) except as provided in subsection (b)(3), and section 4945 (relating to taxes on taxable expenditures) shall apply as if such trust were a private foundation.

ANALYSIS

Section 4947(a)(2) of the Code provides that sections 507, 4941 and 4945 apply to portions of a trust for which a charitable deduction was allowed. Therefore, for section 4947(a)(2) to apply a charitable contribution deduction must have been allowable at the time it was taken. Under section 170(f)(2)(A), in the case of property transferred in trust, no deduction is allowed for the fair market value of a charitable contribution of a remainder interest in property which is less than the donor's entire interest in the property unless the trust is one of the following: (i) a charitable remainder annuity trust described in section 664(d)(1); (ii) a charitable remainder unitrust described in section 664(d)(2); or (iii) a pooled income fund described in section 642(c)(5). See, section 1.170A-6(b)(1) of the regulations. Here, you were purported to be a charitable remainder annuity trust. However, you did not satisfy the requirements of section 664(d)(1)(D) because you never had a remainder interest that had a value of at least ten percent of the initial fair market value of all property placed in trust. You never met the requirements of section 170(f)(2) because you never met the requirements of section 664(d) to be a charitable remainder annuity trust. As such, the charitable contribution deductions taken by A and B were not allowable at the time that they were taken. Therefore, section 4947(a)(2) does not cause sections 507, 4941, or 4945 to apply to you.

RULINGS

In view of the foregoing, we rule as follows:

1. The return of assets by you to A and B will not constitute an act of self dealing under section 4941 of the Code.

2. The return of assets by you to A and B under the facts set forth above will not constitute a taxable expenditure under section 4945 of the Code.

3. The return of assets by you to A and B, will not subject you to the tax on termination of private foundation status imposed by section 507 of the Code.

This ruling is based on the understanding that there will be no material changes in the facts upon which it is based.

We express no opinion as to the tax consequences of the proposed transaction under any other section of the Code.

Pursuant to a Power of Attorney on file in this office, a copy of this letter is being sent to your authorized representatives. A copy of this letter should be kept in your permanent records.

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

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If there are any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Theodore R. Lieber
Manager, Exempt Organizations
Technical Group 3

Enclosure
Notice 437