

## Internal Revenue Service

## Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

**CC:PSI:3-PLR-161373-01**

Date:

**December 21, 2001**

### LEGEND

X =

Fund 1 =

Fund 2 =

Date 1 =

Date 2 =

Dear

This letter responds to your letter, dated September 6, 2001, requesting rulings concerning the federal tax consequences of combining two existing pooled income funds into one fund. Specifically, you requested rulings on whether the combination of the two funds would adversely affect Fund 2's qualification as a pooled income fund under section 642(c)(5) of the Internal Revenue Code, and on the rate of return that should be used to determine the value of subsequent contributions to the surviving fund (Fund 2).

### FACTS

X represents the following facts. X is an organization described in section 170(b)(1)(A)(vi) of the Code. X established and maintains Fund 1 and Fund 2. X established Fund 1 on Date 1, and Fund 2 on Date 2. Fund 1 and Fund 2 each previously received a letter ruling from the Internal Revenue Service stating that each of the funds qualifies as a pooled income fund within the meaning of section 642(c)(5) of the Code. Under the terms of Fund 1's governing instrument, only X is the remainder beneficiary. Under the terms of Fund 2's governing instrument, a donor may designate that the remainder interest be transferred either to X or to one of X's participating local organizations. The letter relating to Fund 2 concludes that Fund 2 satisfies the maintenance requirement of section 642(c)(5)(E).

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In order to save expenses and improve administrative efficiency, X proposes to merge Fund 1 and Fund 2 by transferring Fund 1's assets to Fund 2. Each income beneficiary of Fund 1 will be allocated units of participation in Fund 2, computed by dividing the fair market value of the beneficiary's units in Fund 1 by the fair market value of a unit in Fund 2 immediately before the transfer. After the transfer of assets, Fund 1 will terminate.

Other than the difference noted above, the operating provisions of Fund 1 and Fund 2 are essentially identical.

## LAW AND ANALYSIS

A pooled income fund is a trust that meets the requirements of section 642(c)(5) of the Code. Section 642(c)(5)(A) requires that each donor transfer property to a trust, contributing an irrevocable remainder interest in the property to or for the use of an organization described in section 170(b)(1)(A) (other than in clauses (vii) or (viii)), and retaining an income interest for the life of one or more beneficiaries (living at the time of such transfer).

Section 1.642(c)-5(b)(1) provides that, in order to meet the requirements of a pooled income fund, each donor must transfer property to the fund and contribute an irrevocable remainder interest in such property to or for the use of a public charity, retaining for himself, or creating for another beneficiary or beneficiaries, a life income interest in the transferred property. For purposes of this requirement, a contingent remainder interest is not treated as an irrevocable remainder interest.

The flush language of section 642(c)(5) of the Code contains the rules for determining the amount of any charitable contribution allowable by reason of a transfer of property to a pooled income fund. The value of the income interest is determined on the basis of the highest rate of return earned by the fund for any of the 3 taxable years immediately preceding the taxable year of the fund in which the transfer is made.

Section 1.642(c)-6(c)(1) of the Income Tax Regulations provides that the yearly rate of return earned by a pooled income fund for a taxable year is the percentage obtained by dividing the amount of income earned by the pooled income fund for the taxable year by an amount equal to (i) the average fair market value for the taxable year of the property in the fund less (ii) the corrective term adjustment. The method for computing the average fair market value of a fund's property is set forth in section 1.642(c)-6(c)(2), and the method for computing the corrective term adjustment is set forth in section 1.642(c)-6(c)(3).

## CONCLUSION

The following conclusions are based on the facts submitted and representations made in connection with this letter ruling request.

Assuming that Funds 1 and 2 are qualified pooled income funds with essentially

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identical operating provisions and that there is no change in the owner of the remainder interests with respect to assets of either fund after the merger, we conclude that the merger of Fund 1 into Fund 2 will not adversely affect our prior letter ruling to Fund 2, concluding that Fund 2 is a qualified pooled income fund within the meaning of section 642(c)(5).

Assuming that Fund 2 continues to qualify as a pooled income fund after the merger, an issue arises as to the computation of the rate of return used to determine the value of income interests in property transferred to Fund 2 after the Funds are combined. We conclude that the rate of return for Fund 2 should be determined as if both funds had been combined for all of the taxable years in which the funds are actually combined and for the three preceding taxable years. Thus, for each such year, the percentage is determined by dividing the income earned by both Funds by an amount equal to (i) the average fair market value for the year of the property in both Funds less (ii) the corrective term adjustment for both Funds.

Except as specifically ruled on above, no opinion is expressed concerning the federal tax consequences of the above transaction under any other provision of the Code. Specifically, no opinion is expressed on whether any tax consequences result from the termination of Fund 1.

Under power of attorney on file with this office, we are sending a copy of this letter to X's authorized representative.

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

A copy of this letter should be attached to the federal tax returns filed for the Funds.

Sincerely,  
Jeanne M. Sullivan  
Senior Technician Reviewer, Branch 3  
Office of the Associate Chief Counsel  
(Passthroughs and Special Industries)

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