

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:2- PLR-104222-03

Date:

October 24, 2003

X =

Y =

Z =

Company =

X =

Year 1 =

Year 2 =

Dear :

This letter responds to a letter dated February 11, 2002, and subsequent correspondence, submitted by you as the authorized representative of Z, requesting a ruling on the federal income tax consequences of the termination of a trust.

The information submitted states that X is a nonprofit organization organized under the laws of State which is exempt from federal income tax under § 501(c)(6) as a business league. In Year 1, X created Y, a taxable trust, in order to provide certain insurance benefits to the members of X.

Company was a mutual insurance company which provided insurance products for the members of X through Y. In Year 2, Company completed its demutualization. As a result, Y received x shares of Company stock as demutualization proceeds. X proposes to terminate Y and transfer all of Y's surplus assets (including the Company stock), after the payment of all obligations, to Z, a charitable foundation described in § 501(c)(3).

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Article IX, Section 1, of the Y trust instrument, provides that under certain circumstances, upon the termination of Y, the trustees of Y may transfer all or part of a surplus in Y to a foundation qualified under § 501(c)(3), to be established for certain listed purposes.

Rev. Rul. 83-75, 1983-1 C.B. 114, holds that the distribution by a trust of appreciated securities in satisfaction of its obligation to pay a fixed annuity to a charitable organization results in a taxable gain to the trust. Rev. Rul. 83-75 cites § 1.661(a)-2(f)(1) of the Income Tax Regulations and Kenan v. Commissioner, 114 F.2d 217 (2d Cir. 1940) in determining the proper treatment of an in-kind distribution of property.

Section 1.661(a)-2(f)(1) provides that if property is paid, credited, or required to be distributed in kind by a trust or estate, no gain or loss is realized by the trust or estate (or the other beneficiaries) by reason of the distribution, unless the distribution is in satisfaction of a right to receive a distribution in a specific dollar amount or in specific property other than that distributed.

In Kenan v. Commissioner, the trustees of a trust were directed to pay a beneficiary \$5 million when the beneficiary reached age 40. The trustee paid the beneficiary partly in cash and partly in appreciated securities. The court held that the beneficiary had a general claim against the trust corpus, and the satisfaction of this general claim for an ascertainable value by a transfer of specific assets was an exchange that caused the trust to realize gain.

Based solely on the facts and representations submitted, we conclude that the distribution of Y's surplus assets, including the Company stock, to Z is not a distribution in satisfaction of a right to receive a distribution in a specific dollar amount or in specific property other than that distributed, nor is it a distribution in satisfaction of a general claim for an ascertainable value, and therefore no gain or loss will be realized by Y as a result of such distribution.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the transactions described above. In particular, we express no opinion as to whether Y is subject to the provisions of subchapter L of chapter 1, dealing with insurance companies.

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.

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Pursuant to a power of attorney on file with this office, copies of this letter are being forwarded to Z and to Z's other authorized representative.

Sincerely yours,

J. THOMAS HINES
Chief, Branch 2
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures: 2

Copy of this letter

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