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Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:2 - PLR-118554-99

Date:

November 28, 2000

H =

W =

D =

Trust =

Charity =

State =

Dear :

This is in response to your letter dated, October 19, 1999, requesting various rulings regarding a proposed charitable remainder unitrust.

H and W propose to establish the Trust under the laws of State and intend to fund the Trust with publicly traded stock. The Trust is intended to qualify as a charitable remainder unitrust under section 664(d)(2) of the Code. The governing instrument of the Trust provides that the unitrust amount will be equal to seven percent of the net fair market value of the trust assets (determined as of the first day of the taxable year of the Trust).

Fifty percent of the unitrust amount will be paid to D for D's life, thirty-five percent of the unitrust amount will be paid to Charity, a charitable organization under § 170, for five years (or termination of the Trust if earlier) and then to D for D's life, and fifteen percent will be paid to Charity for D's life. At D's death the Trust will terminate and the trustee will distribute the balance of the Trust assets (after payment of administration expenses and other proper charges therein) to Charity.

Section 664(d)(2) of the Code sets forth the requirements to be a charitable remainder unitrust. Section 664(d)(2)(A) provides that a fixed percentage (which is not less than five percent nor more than 50 percent) of the net fair market value of the 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. Section 664(d)(2)(B) provides that no amount other than the above-described payments may be paid to or for the use of any person other than an organization described in § 170(c). Section 664(d)(2)(C) provides, in part, that following the termination of the payments described above, the remainder interest in the trust is to be transferred to, or for the use of, an organization described in § 170(c). Section 664(d)(2)(D) provides that the value (determined under § 7520) of such remainder interest must be at least ten percent of the initial net fair market value of all property placed in the trust.

Section 1.664-3(a)(5) of the Income Tax Regulations provides that only an individual or an organization described in § 170(c) may receive a unitrust amount for the life of an individual. If an individual receives a unitrust amount for life, it must solely be for his life.

Section 2501(a)(1) of the Code imposes for each calendar year a tax on the transfer of property by gift during the calendar year by any individual, resident or nonresident.

Section 2522(a) provides that, in computing taxable gifts for the calendar year, there is allowed a deduction for: (1) all gifts to or for the use of federal or other government entities for exclusively public purposes, (2) all gifts to or for the use of a corporation or trust operated exclusively for religious, scientific, literary, or educational purposes, or (3) certain transfers to fraternal or veterans organizations.

Section 2522(c)(2) provides that 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) or (b) 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) or (b), no deduction is allowed for the interest that is, or has been transferred to the person, or for the use, described in § 2522(a) or (b), unless-

(A) in the case of a remainder interest, the interest is in a trust that is a charitable remainder annuity trust or a charitable remainder unitrust or a pooled income fund (described in § 642(c)(5)), or

(B) in the case of any interest, the 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).

Section 25.2522(c)-3(c)(1)(i) of the Gift Tax Regulations states that if, after July 31, 1969, a donor transfers an interest in property for charitable purposes and either retains or transfers an interest in the same property for private purposes, no deduction is allowed under § 2522 for the value of the interest which is transferred for a charitable purpose unless the interest in property is a "deductible interest" described in § 25.2522(c)-3(c)(2).

Section 25.2522(c)-3(c)(2)(v) provides that the term "deductible interest" includes a remainder interest in a trust which is a charitable remainder unitrust.

Section 25.2522(c)-3(c)(2)(vii) provides that the term "deductible interest" includes a unitrust interest. A unitrust interest is defined as an irrevocable right to receive payment, not less often than annually, of a fixed percentage of the net fair market value, determined annually, of the property that funds the unitrust interest. Payments must be paid for a specified term, or for the life or lives of an individual or individuals, each of whom must be living at the date of the gift and can be ascertained at that date.

Section 170 of the Code permits a deduction for any charitable contribution to an organization described in § 170(c), payment of which is made within the taxable year.

Section 1.170A-1(c)(1) of the Income Tax Regulations provides that, if a charitable contribution is made in property other than money, the amount of the contribution is the fair market value of the property at the time of the contribution, reduced as provided in § 170(e)(1) of the Code and § 1.170A-4(a) of the Regulations.

Section 170(f)(2)(a) of the Code however, provides in pertinent part, that no deduction is allowed under § 170 for the value of a remainder interest transferred in trust unless the trust is a charitable remainder unitrust (or a charitable remainder annuity trust) described in § 664 of the Code (or a pooled income fund described in § 642(c)(5)).

Based solely on the information submitted, we conclude that upon the execution of Trust, the governing instrument will meet the requirements of a charitable remainder unitrust under § 664 of the Code, provided that Trust is a valid trust under applicable local law.

We also conclude that the present value of the remainder interest will qualify for a gift tax charitable deduction under § 2522. For purposes of the gift tax charitable deduction, the present value of the remainder interest transferred to the Charity will be determined under the valuation methodology described in § 25.2512-5T(d)(2)(i) of the Temporary Gift Tax Regulations and § 1.664-4T(e) of the Temporary Income Tax Regulations.

The fifteen percent of the unitrust amount that will be paid to the Charity for the life of D will qualify as a unitrust interest described in § 25.2522(c)-3(c)(2)(vii). In addition, the thirty-five percent of the unitrust amount paid to the Charity for five years, or the death of D, will also qualify as a unitrust interest described in § 25.2522(c)-3(c)(2)(vii). Thus, the present value of these unitrust interests transferred by H and W to the Charity will qualify for a gift tax charitable deduction under § 2522.

The gift tax charitable deduction with respect to the fifteen percent share of the unitrust interest passing to the Charity is determined by multiplying the present value of the unitrust (determined under § 25.2522(c)-3(d)(2)(v), by subtracting the present value of the Charity's remainder interest in the Trust from the value of the property transferred to Trust) by fifteen percent.

The gift tax charitable deduction with respect to the thirty-five percent share of the unitrust interest passing to the Charity for a period of five years or until the prior death of D is determined by multiplying the present value of a unitrust interest that is payable for a term of five years or until the prior death of D, under the valuation methodology described in § 25.2512-5(d)(2)(v)(B) of the Gift Tax Regulations, by thirty-five percent.

Assuming that the property with which the Trust will be funded will be publicly traded securities, gain from which would have been long-term capital gain if the property had been sold by H and W at its fair market value at the time of contribution (and that any testamentary contributions also will not be subject to the reduction required under § 170(e)(1)), we conclude that H and W will be entitled to an income tax deduction under § 170, based on the present value of the remainder interest created for

Charity. The amount of the charitable contribution deduction in respect of such remainder interest for any taxable year will be determined under § 170 and the applicable regulations thereunder.

We further conclude that no additional income tax charitable contribution deduction is allowed for the share of the unitrust amount paid to Charity during the term of the trust (in the case of Charity's fifteen percent share) or during the initial five year term (in the case of Charity's interest in the thirty-five percent share).

No opinion is expressed as to the federal tax consequences of the formation or operation of Trust under the provisions of any other section of the Code.

A copy of this letter should be attached to H and W's first federal tax return that reflects this transaction.

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

Sincerely yours,

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

Enclosures: 2
Copy of this letter
Copy for § 6110 purposes