

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B02

PLR-161885-03

Date:

June 3, 2005

Trust =

A =

B =

C =

D1 =

x =

y =

z =

Dear :

This letter responds to a letter dated October 24, 2003, and subsequent correspondence, submitted on behalf of Trust by its authorized representative, requesting certain rulings under the Internal Revenue Code.

The information submitted states that A died on D1, survived by two children, B and C. A was the grantor of Trust, which was revocable by A during A's life. Under the terms of Trust, which became irrevocable upon A's death, the residue of A's estate, after certain pecuniary and specific bequests, is to be divided into a Charitable Share consisting of x% of the remaining Trust assets, to be distributed to A's private foundation (the Foundation), and a Children's Share consisting of y% of the remaining

Trust assets. Trust provides that all transfer taxes (other than certain generation-skipping transfer taxes) shall be payable from the Children's Share, if either or both of A's children survive A.

The Children's Share is further divided into equal shares for B and C. B's share is subdivided into two trusts pursuant to a formula provided in Trust, one share for the benefit of B and B's descendants (the Descendants Trust) and one share intended to qualify as a charitable remainder unitrust (CRUT) under § 664 with B as the unitrust beneficiary (the B CRUT). C's share is to be held as a CRUT with C as the unitrust beneficiary (the C CRUT).

The terms of the B CRUT and the C CRUT (collectively, the CRUTs) are substantially identical other than the identity of the unitrust beneficiary. Each of the CRUTs provides that the beneficiary shall receive an annual unitrust amount equal to the lesser of (a) the trust income as defined in § 643(b) or (b) z% of the net fair market value (FMV) of the trust assets valued as of the first day of the taxable year. The unitrust amount also includes any amount of trust income in excess of (b) to the extent that the aggregate of the amounts paid in prior years was less than the aggregate of the amounts computed as z% of the net FMV of the trust assets on the valuation dates. Upon the death of the unitrust recipient, the trust property shall be distributed to the Foundation (or to another qualified charity, if the Foundation no longer exists or is no longer an organization described in §§ 170(c) and 2055(a)).

The obligation to pay the unitrust amount shall commence as of A's date of death, but payment may be deferred from such date until the end of the taxable year of the trust in which occurs the complete funding of the trust. Within a reasonable time after the end of the taxable year in which complete funding occurs, overpayments or underpayments between the trust and the unitrust recipient must be accounted for in the manner described in the § 664 regulations.

The CRUTs have not been funded by the trustee of Trust and no payments have been made to B and C in respect of their unitrust interests. The trustee of Trust proposes to obtain an order from the appropriate state court modifying Trust by adding the following provision:

"My Trustee shall pay the Federal or State estate tax or death tax liability, including any Federal or State tax deficiency, interest, and/or penalty related thereto (the "Tax Liability"), out of assets that would otherwise pass to the [B CRUT] and the [C CRUT]. If (i) my Trustee makes interim distributions to the [B CRUT] and/or the [C CRUT] (either to [either CRUT] or by a direct transfer to one or both of the Recipients) prior to the final determination of the Tax Liability, and (ii) the assets retained by my Trustee are insufficient to pay any remaining Tax Liability, the Recipient of each Trust shall pay the share of such insufficiency attributable to the Trust of which he or she is the Recipient. The Trustee

of a Trust shall not return any of its assets to the Trustee of [Trust] or pay any portion of the Tax Liability from assets previously contributed to the Trust by the Trustee of [Trust]. If the Recipient pays his or her share of such insufficiency, my Trustee shall continue to administer the Trust for the Recipient's benefit exactly as if the full Tax Liability had been satisfied with assets retained by [Trust]. If a Recipient fails to pay his or her share of such insufficiency, the unitrust interest with respect to such Recipient shall immediately terminate."

Section 664(d)(2) defines a CRUT. Section 664(d)(2)(B) provides that no amount other than the payments described in § 664(d)(2)(A) (the unitrust amount) and other than qualified gratuitous transfers described in § 664(d)(2)(C) may be paid from a CRUT to or for the use of any person other than an organization described in § 170(c).

Section 1.664-1(a)(4) of the Income Tax Regulations provides that in order for a trust to be a charitable remainder trust, it must meet the definition of and function exclusively as a charitable remainder trust from the creation of the trust.

Section 1.664-1(a)(5)(i) provides that notwithstanding § 1.664-1(a)(4) and §§ 1.664-2 and 1.664-3, for purposes of §§ 2055 and 2106 a charitable remainder trust shall be deemed created at the date of death of the decedent (even though the trust is not funded until the end of a reasonable period of administration or settlement) if the obligation to pay the annuity or unitrust amount with respect to the property passing in trust at the death of the decedent begins as of the date of death of the decedent, even though the requirement to pay such amount is deferred in accordance with the rules provided in § 1.664-1(a)(5)(i). If permitted by applicable local law or authorized by the provisions of the governing instrument, the requirement to pay such amount may be deferred until the end of the taxable year of the trust in which occurs the complete funding of the trust.

Section 1.664-1(a)(5)(iii) provides that the treatment of a distribution to a charitable remainder trust, or to a recipient in respect of an annuity or unitrust amount, paid, credited, or required to be distributed by an estate, or by a trust which is not a charitable remainder trust, shall be governed by the rules of subchapter J of chapter 1 of subtitle A of the Code other than § 664. In the case of a charitable remainder trust which is partially or fully funded during the period of administration of an estate or settlement of a trust (which is not a charitable remainder trust), the treatment of any amounts paid, credited, or required to be distributed by the charitable remainder trust shall be governed by the rules of § 664.

Based solely on the facts and representations submitted, we conclude that if Trust is modified by the state court as described above, the trustee may make a partial or complete funding of the CRUTs or make payments from Trust to B and C in respect of their unitrust amounts without causing the CRUTs to cease to qualify under § 664, even though the estate tax liability arising from A's death has not been finally

determined. If, after the modification of Trust, B or C fails to pay any additional Tax Liability for which they would be responsible under the modification to Trust, then that beneficiary's CRUT will cease to qualify under § 664.

For purposes of § 2055, the estate tax charitable deduction is determined as if all estate taxes are paid out of the Children's Share, regardless of whether B or C personally pays any portion of the estate tax. Further, the deduction allowed is determined based on the actuarial value of the remainder interests as of the date of A's death, even if B or C's unitrust interest is terminated because the child fails to pay the tax.

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. In particular, we offer no opinion as to whether the CRUTs otherwise qualify under § 664.

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

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to Trust's authorized representative.

Sincerely,

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

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