

Internal Revenue Service

Department of the Treasury

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Legend

Trust =

X =

Y =

Charity =

s =

t =

Cite A =

This letter responds to a letter, dated September 1, 1998, submitted by your authorized representative on behalf of Trust, requesting a ruling regarding the application of § 664 of the Internal Revenue Code to a proposed amendment to the governing instrument of Trust.

The information submitted indicates that Trust is a charitable remainder annuity trust described in § 664(d)(1). The governing instrument of Trust provides that the trustee, Y, shall pay an amount (the "annuity amount") equal to five percent of the initial fair market value of Trust property to X for life. The annuity amount is paid in quarter-annual installments from Trust income and, to the extent Trust's income is insufficient, from principal. Any Trust income in excess of the annuity amount is paid to Charity, a

nonprofit organization described in § 170(c). The governing instrument provides that at the time of any payment to Charity, Charity must qualify as an organization described in §§ 170(c) and 2055(a).

The governing instrument provides that the adjusted basis of any trust property that the trustee distributes in kind to charity during the life of X must be fairly representative of the adjusted basis for such purposes of all trust property available for distribution on the date of distribution.

Charity has received only nominal payments of income from Trust. Therefore, X, Y, and Trust propose to amend the governing instrument to provide that Y may distribute up to \$s from Trust principal to Charity each year during X's lifetime if the principal amount of Trust is at least \$t after each distribution (the Proposed Amendment).

It has been represented that state law allows nonjudicial resolution agreements to grant trustees necessary or desirable powers not otherwise granted in the trust instrument or given by law that are not inconsistent with the provisions or purposes of the trust. Such written agreements may be filed with the court and, following a statutory period and assuming no objections, such agreement is deemed as a final order binding all parties. If all required parties waive the notice procedure, the agreement will be deemed approved and will be equivalent to a final order binding all parties on the date of filing. Cite A.

It has also been represented that X will not claim a deduction under §§ 170 or 2522 for any distribution to Charity.

You have requested a ruling that adoption of the Proposed Amendment will not disqualify Trust as a charitable remainder trust under § 664.

Section 664(d)(1) provides, in part, that a charitable remainder annuity trust is a trust (A) from which a sum certain (which is not less than 5 percent nor more than 50 percent of the initial net fair market value of all property placed in trust) 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 of such individual, (B) from which no amount other than the amount described in § 664(d)(1)(A) may be paid to or for the use of any person other than an organization described in § 170(c), and (C) following the termination of the payments described in § 664(d)(1)(A), the remainder interest in the trust is to be transferred to, or for the use of, an organization described in § 170(c).

Section 1.664-2(a)(4) of the Income Tax Regulations provides that no amount other than the annuity amount may be paid to or for the use of any person other than

an organization described in § 170(c). Section 1.664-2(a)(4) further provides that the governing instrument may provide that any amount other than the annuity amount shall be paid (or may be paid in the discretion of the trustee) to an organization described in § 170(c) provided that, in the case of distributions in kind, the adjusted basis of the property distributed is fairly representative of the adjusted basis of the property available for payment on the date of payment.

After applying the law to the facts submitted and representations made, we conclude that the proposed amendment to Trust's governing instrument allowing Y to distribute to a charitable remainder beneficiary described in § 170(c) up to \$s of Trust principal each year during X's life will not disqualify Trust as a charitable remainder annuity trust under § 664.

Except as specifically provided above, we express no opinion regarding the federal income tax treatment of Trust or the consequences of the proposed amendment under any other provision of the Code or regulations. Specifically, we express no opinion regarding whether Trust is a charitable remainder annuity trust under § 664 or whether Charity is an organization described in § 170(c).

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

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

Sincerely yours,

Jeff Erickson
Assistant to the Chief,
Branch 3
(Office of the Assistant Chief Counsel
Passthroughs & Special Industries)

Enclosure

Copy for § 6110 purposes