



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

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Date: September 8, 2005

Contact Person:

Identification Number:

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Telephone Number:

Employer Identification Number:

Legend:

A =
B =
C =
D =
E =
F =
G =

Dear :

We have considered your ruling request dated July 14, 2004 on the proper treatment of the termination of A and whether the termination constitutes an act of self dealing under section 4941 of the Internal Revenue Code.

A is a charitable remainder unitrust under section 664(d)(2) of the Code. A was created by B and is governed by state law. B exercised his right to amend Article Third of A to designate C as the remainder beneficiary of the Trust. In addition, in this First Amendment A relinquished his power under Article Third of A to change the charitable remainder beneficiary.

C is a charitable corporation organized under the laws of E, with charitable purposes that qualify as exempt in the United States under section 501(c)(3) of the Code. While organized as a foreign charitable company, it is wholly owned by D, a corporation formed under the laws of the United States and described in sections 501(c)(3) and 170(b)(1)(A)(vi) of the Code. While for property law purposes C will be the recipient of the remainder interest in A, for U.S. income tax purposes D is considered the recipient of the remainder interest.

B served as the original trustee of A, but resigned on December 18, 1996, and simultaneously appointed F. F resigned and B appointed G as trustee. G is now serving as the sole trustee.

B is the current beneficiary of A and has the right to receive a sixteen percent (16%) unitrust amount annually, payable in quarterly installments. A shall terminate upon the earlier to occur of the death of B or twenty (20) years from the date of execution of the trust, February 27, 2016. Upon the termination of A, the remaining trust property will be distributed to C.

B and C have determined that it is in each of their respective best interests to have the trust terminated. G proposes to terminate A and after making provision for all expenses of A, B and C will receive lump sums equal to the present actuarial value of their respective interests as of the date of termination. G proposes to determine these present actuarial values by using the discount rate in effect under section 7520 of the Code on the date of termination and the methodology under section 1.664-4 of the Income Tax Regulations for valuing interests in charitable remainder trusts.

G proposes to terminate A under the state laws. The terms of A do not prohibit early termination and under the laws of the state, G will petition a court of appropriate jurisdiction to request termination of A and C will consent to the termination. The state's Attorney General shall be included as a necessary party to the court action and is expected to consent to the termination as well, although it is not necessary for the Attorney General to consent for the court to authorize termination of A.

B's physician examined B and signed an affidavit, under the pains and penalties of perjury, that to the best of his knowledge and belief, B has no medical condition that is expected to result in a shorter longevity than that set forth in Table V of section 1.72-9 of the regulations for a person of B's age. B has also signed an affidavit, under the pains and penalties of perjury, that to the best of his knowledge and belief he has no medical condition that is expected to result in a shorter longevity than that set forth in Table V of section 1.72-9 of the regulations for a person of his age.

Rulings Requested

The following rulings are requested:

1. The early termination of A as proposed will not constitute self-dealing under section 4941 (d) of the Internal Revenue Code.
2. The early termination of A will not result in imposition of the termination tax under section 507(c) of the Code.

Statement of the Law

Section 664 of the Code exempts from income tax charitable remainder unitrusts, which it defines as those from which a fixed percentage of the net fair market value of its assets is paid to at least one person not an organization described in section 170(c) for a term of years, after which the remainder interest is transferred to an organization described in section 170(c).

Section 507(a) of the Code imposes substantial taxes on foundations that cease to qualify as private foundations, or commit acts giving rise to liability for tax under chapter 42.

Section 4941(a) of the Code imposes an excise tax on disqualified persons for each act of self-dealing between a disqualified person and a private foundation.

Section 4941(d)(1) of the Code defines self-dealing as including any direct or indirect;

(A) sale or exchange, or leasing, of property between a private foundation and a disqualified person, or

(E) transfer to, or use by or for the benefit of, disqualified person of the income or assets of a private foundation.

Section 4947(a)(2) of the Code provides, in pertinent part, that in the case of a trust which is not exempt from tax under section 501(a), not all of the unexpired interests of which are devoted to charitable purposes, and which has accounts in trust for which a charitable deduction was allowed, sections 507 and 4941 apply as if such trust were a private foundation.

Section 4947(a)(2)(A) of the Code provides that section 4947(a)(2) shall not apply with respect to any amounts payable under the terms of such trust to non-charitable income beneficiaries.

Section 1.508-3(e)(2) of the Income Tax Regulations provides generally that a split-interest trust described in section 4947(a)(2) of the Code is subject to the provisions of section 508(e) to the extent that section 4947 applies sections 4941-4945 to such a trust.

Section 53.4941(d)-1 (a) of the Foundation and Similar Excise Taxes Regulations provides that it is immaterial whether a transaction results in a benefit or a detriment to the private foundation in determining whether the transaction is an act of self-dealing.

Section 53.4941(d)-2(f)(2) of the regulations provides that the fact that a disqualified person receives an incidental or tenuous benefit from the use by a foundation of its income or assets will not, by itself, make such use an act of self-dealing.

Section 53.4947-1(e) of the regulations provides that the provisions of section 507(a) of the Code shall not apply to a trust described in section 4947(a)(1) or (2) by reason of any payment to a beneficiary that is directed by the terms of the governing instrument of the trust and is not discretionary with the trustee or, in the case of a discretionary payment, by reason of, or following, the expiration of the last remaining charitable interest in the trust.

Section 53.4947-1(e)(2) of the regulations sets forth the following relevant example:

Example (3): J creates a charitable remainder annuity trust described in section 664(d)(1) under which S, J's son, receives \$ 10,000 per year for life, remainder to be distributed outright to P, an organization described in section 501(c)(3). J is allowed a deduction under section 170 for the value of the remainder interest placed in trust for the benefit of P, and the provisions of section 4947(a)(2) apply to the trust. At the death of S, the trust will terminate and all assets will be distributed to P. However, such final distribution to P will not be considered a termination of the trust's private foundation status within the meaning of section 507(a).

ANALYSIS

Section 4947(a)(2)(A) of the Code provides that the tax on self-dealing applies to transfers to a disqualified person of the assets of a split-interest trust, except for amounts payable under the terms of such trust to income beneficiaries. State law provides for early termination under the facts presented. However, it does not settle the proper allocation between the income and remainder beneficiaries. The question is whether early termination may reasonably be expected to result in a greater allocation of the trust assets to the income beneficiary, to the detriment of the charitable beneficiary. In this case, the income beneficiaries are not expected to receive more than they would during the full term of the trust. The charitable remainder beneficiaries might receive more because the donors have a right to change the remainder beneficiaries, or designate additional ones and change the proportions.

RULINGS

The following facts show that the early termination will not be to the detriment of the charitable beneficiary: State law allows the early termination and all beneficiaries favor it; the proposed division will not duplicate the intent of A in a different time frame because the trustee will use the Income Tax Regulations' formula for determining the present values of the income and remainder interests in a charitable remainder trust; the income beneficiaries' physician has conducted physical examinations and stated under penalties of perjury that he finds no medical conditions expected to result in a shorter-than-average longevity under section 1.72-9 of the regulations; and the income beneficiaries have signed similar statements.

Therefore, we rule that:

1. The early termination of A as proposed will not constitute self-dealing under section 4941(a)(1) of the Code.
2. The early termination of A will not result in the imposition of the termination tax under section 507(c) of the Code.

This ruling will be made available for public inspection under section 6110 of the Code after deletions of identifying information are made. For details, see enclosed notice 437, Notice of Intention to Disclose. A copy of this ruling with deletions that we intend to be available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

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

This ruling is based on the understanding that there will be no material changes in the facts upon which it is based. Also we express no opinion as to the tax consequences of the transactions under other provisions of the Code. If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter. You should keep a copy for your permanent records.

Sincerely yours,

/s/

Debra Kawecki
Manager, Exempt Organizations
Technical Group 1

Enclosure
Notice 437