200310024

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: DEC 12 2002

NO THIRD PARTY CONTACTS

SIN: 4947.02-01
4941.04-00

T:EO:B4

Employer Identification Number:

Legend:
G =
Trust =
Charity =

Dear Sir or Madam:

This is in response to a ruling request submitted on your behalf on August 8, 2001, as supplemented by a further submission of January 10, 2002.

G is the creator and the non-charitable beneficiary of G Charitable Remainder Trust (Trust), a charitable remainder unitrust.

G receives, quarter-annually, a unitrust amount equal to the lesser of (a) the income of the Trust for such year and (b) five percent of the net fair market value of the Trust assets, determined as of the first day of such year. Additionally, in any year in which the income of the Trust exceeds the amount described in clause (b), G is to receive such excess income to the extent the aggregate of the amounts paid to G in past years is less than the five percent of the net fair market value of the Trust assets for those years. The assets of the Trust constitute a diversified portfolio consisting of cash and investments in mutual funds and securities of publicly traded entities, none of which is controlled by G. The Trust terminates at G's death, at which time the assets owned by the Trust will be paid to such organizations described in sections 170(b)(1)(A), 170(c), 2055(a) and 2522(a) of the Internal Revenue Code as shall be designated by G.

In 2001, G irrevocably designated Charity, an organization described in sections 170(b)(1)(A), 170(c), 2055(a) and 2522(a) of the Code, the remainder beneficiary of a percentage of the Trust assets. On the same day, G made a gift to Charity of the same percentage of his unitrust interest in the Trust. The two actions, taken together, effected a merger of Charity's income and remainder interests, resulting in a partial termination of the Trust in favor of Charity. The assets, distributed in kind, were fairly representative of the adjusted

bases of the assets of the Trust. There was no arrangement or understanding with Charity as to its use of the Trust assets and G has no authority to direct the expenditure of the funds received.

G proposes the following transaction that will provide Charity with additional funds. G will irrevocably designate Charity as the remainder beneficiary of an additional percentage [which is contemplated to be less than 100%] of the Trust assets and will sell to Charity the same percentage of G's unitrust interest in the Trust. The purchase price of the unitrust interest will be based on the present value of G's right to receive, for the rest of G's life, quarter-annual unitrust payments from the Trust on that percentage of the Trust assets. These two actions, taken together, will effect a merger of Charity's income and remainder interest, resulting in an additional partial termination of the Trust in favor of Charity.

Based on these facts, Trust requests the following rulings:

1. That the sale by G of a portion of his unitrust interest to Charity, followed by a partial termination of the Trust in favor of Charity, will not cause the Trust to cease to be a trust described in sections 664(d)(2) and 664(d)(3) of the Code.

2. That the sale, if consummated under the circumstances set forth, will not constitute an act of self-dealing, as defined in section 4941 of the Code.

Section 664(d)(2) of the Code provides that for purposes of section 664, a charitable remainder unitrust is a trust -

(A) from which a fixed percentage (which is not less that 5 percent nor more than 50 percent) of the net fair market value of its 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 section 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,

(B) from which no amount other than the payments described in section 664(d)(2)(A) and other than qualified gratuitous transfers described in section 664(d)(2)(C) may be paid to or for the use of any person other than an organization described in section 170(c),

(C) following the termination of the payments described in section 664(d)(2)(A), the remainder interest in the trust is to be transferred to, or for the use of, an organization described in section 170(c) or is to be retained by the trust for such a use or, to the extent the remainder interest is in qualified employer securities (as defined in section 664(g)(4)), all or part of such securities are to be transferred to an employee stock ownership plan (as defined in section (as defined in section 4975(e)(7)) in a qualified gratuitous transfer (as defined in section 664(g)), and

(D) with respect to each contribution of property to the trust, the value (determined under

section 7520) of such remainder interest in such property is at least 10 percent of the net fair market value of such property as of the date such property is contributed to the trust.

Section 1.664-3(a)(3)(ii) of the Income Tax Regulations provides that a trust is not a charitable remainder unitrust if any person has the power to alter the amount to be paid to any named person other than an organization described in section 170(c) if such power would cause any person to be treated as the owner of the trust, or any portion thereof, if subpart E, part 1, subchapter J, chapter 1, subtitle A of the Code were applicable to such trust.

Section 1.664-3(a)(4) provides, in part, that the trust may not be subject to a power to invade, alter, amend, or revoke for the beneficial use of a person other than an organization described in section 170(c). Notwithstanding the preceding sentence, the grantor may retain the power exercisable only by will to revoke or terminate the interest of any recipient other than an organization described in section 170(c).

In this case, it is represented that under local law, upon G's sale of a percentage of his unitrust interest, Charity's interest in that percentage of the unitrust payment and that percentage of its interest in the remainder of the Trust will merge. Although a partial termination of the Trust will occur, Trust will continue to be in the form of, and to function as a charitable remainder unitrust within the meaning of section 664(d)(2). Accordingly, we rule that G's sale of a percentage of his unitrust interest to Charity will not cause Trust to cease to be a trust described in section 664(d)(2). However for purposes of this transaction, G has zero basis in his unitrust interest in Trust. Therefore, the amount of gain G must recognize under section 1001(c) is the entire amount he realizes from the sale of that percentage of his unitrust interest.

Section 4947(a)(2) of the Code provides, in part, that in the case of a trust which is not exempt from tax under section 501(a), not all of the unexpired interests in which are devoted to one or more purposes described in section 170(c)(2)(B), and which has amounts in trust for which a deduction was allowed under sections 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522, section 4941 (and sections 507 and 4945) shall apply as if such trust were a private foundation.

Section 4941 of the Code imposes a tax on any act of self-dealing between a private foundation and a disqualified person as defined in section 4946.

Section 4946(a)(1)(A) of the Code describes a disqualified person to include a "substantial contributor."

Section 53.4947-1(c)(2)(i) of the Foundation and Similar Excise Taxes Regulations provides, in essence, that under section 4947(a)(2)(A), the self dealing provisions under section 4941 and certain other private foundation rules do not apply to amounts payable under the terms of a split-interest trust to income beneficiaries for which a charitable deduction was allowed with the creation of the split-interest trust.

Although G is a disqualified person within the meaning of section 4946(a)(1)(A) of the Code because he is the settlor of Trust, his annual distribution from Trust of his unitrust amount

is not an act of self-dealing by virtue of section 53.4947-1(c)(2)(i) of the regulations. The amount G receives from the sale of his unitrust interest is derived solely from his income right in Trust. Accordingly, we rule that G's sale of a percentage of his unitrust entitlement to Charity will not be an act of self-dealing within the meaning of section 4941 of the Code.

Except as specifically ruled above, no opinion is expressed concerning the federal tax consequences of the proposed transaction described above under any other provision of the Code, including whether Trust otherwise meets the requirements to qualify as a charitable remainder unitrust. Furthermore, we express no opinion as to whether local law requirements for merger will be satisfied.

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

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.

Sincerely,

(signed) Gerald V. Sack

Gerald V. Sack
Manager, Exempt Organizations
Technical Group 4