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CRUT Division Pursuant to Divorce Permitted

IRS approved converting one charitable remainder unitrust into two

Andrew Katzenberg | Dec 08, 2016

In Private Letter Ruling 201648007 (released Nov. 25, 2016), a taxpayer and his spouse requested a ruling on the division of a qualifying charitable remainder unitrust (CRUT) into two CRUTS pursuant to a divorce settlement agreement.

Division Proposed

The taxpayer created a CRUT (original CRUT), taking a deduction for the remainder interest (and not the income interest). The PLR didn't specify who was the income beneficiary of original CRUT or who made the initial contributions to original CRUT. Sadly, the taxpayer and his spouse agreed to a divorce after the creation of the original CRUT, and pursuant to the divorce settlement agreement, the original CRUT was to be divided into two new CRUTS ("Taxpayer's trust" and "Taxpayer's spouse's trust").

Taxpayer's trust and Taxpayer's spouse's trust planned to be identical to the original CRUT with the following exceptions: (1) the taxpayer and his spouse wouldn't have an interest in each other's trust, (2) the taxpayer and his spouse would each be the sole non-charitable beneficiary of their respective trust, and (3) after the death of the taxpayer or his spouse, the balance remaining in each's respective trust would be distributed to the charitable beneficiaries designated by the taxpayer or his spouse.

CRUT Requirements Met

The IRS held that since Taxpayer's trust and Taxpayer's spouse's trust each met the requirements for a CRUT under Internal Revenue Code Section 664(d)(2), the division of the original CRUT into two new CRUTs wouldn't cause any of the CRUTs to fail to qualify as CRUTs. The ruling is very sparse on this point other than listing out the requirements for a CRUT.

No Additional Taxes

Additionally, the IRS ruled that there was no income, estate, gift or excise taxes caused by the division of the original CRUT into two new CRUTs. Most notably, the taxpayer and his spouse will each be deemed the transferor of their respective new CRUTs. Thus, all of the assets of their respective CRUTs will be includible in their respective estates because they each retained: (1) the right to the income for their respective lives, and (2) the right to designate the charitable beneficiaries. Since these are split-interest charitable trusts, the taxpayer and his spouse will each be

entitled to an estate tax charitable deduction for the amount passing to charity at their respective deaths.

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