

Internal Revenue bulletin

Bulletin No. 1999-44
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HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

INCOME TAX

Rev. Rul. 99-44, page 549.

Gifts; charitable contributions; Individual Development Accounts. This ruling holds that (1) interest earned by an Individual Development Account (IDA) project participant on funds deposited in the participant's personal account is currently includible in the participant's gross income under section 61 of the Code; (2) a project participant may exclude, as a gift under section 102, parallel funds paid for a qualified expense of the project participant; and (3) a donor may deduct under section 170 a contribution to a qualified entity for the qualified entity's IDA project, subject to the limitations of that section.

REG-116125-99, page 552.

Proposed regulations under section 664 of the Code modify the application of the rules governing the character of cer-

tain distributions from a charitable remainder trust. A public hearing is scheduled for February 9, 2000.

Announcement 99-104, page 555.

This announcement provides an additional period of time during which 1998 IRA contributions, including Roth IRA conversion contributions, may be recharacterized and describes how to accomplish those recharacterizations. Announcement 99-57 modified.

EXEMPT ORGANIZATIONS

Announcement 99-105, page 555.

A list is given of organizations now classified as private foundations.

Finding Lists begin on page ii.
Index for July through October begins on page iv.



Department of the Treasury
Internal Revenue Service

The IRS Mission

Provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities

and by applying the tax law with integrity and fairness to all.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly and may be obtained from the Superintendent of Documents on a subscription basis. Bulletin contents are consolidated semiannually into Cumulative Bulletins, which are sold on a single-copy basis.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and proce-

dures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.

This part is divided into two subparts as follows: Subpart A, Tax Conventions, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.

To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.

This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The first Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the first Bulletin of the succeeding semiannual period, respectively.

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Part I. Rulings and Decisions Under the Internal Revenue Code of 1986

Section 61.—Gross Income Defined

26 CFR 1.61-7: Interest.

Is interest earned by an Individual Development Account project participant on funds deposited in the participant's personal account includible currently in the participant's gross income under section 61 of the Code? See Rev. Rul. 99-44, on this page.

Section 102.—Gifts and Inheritances

26 CFR 1.102-1: Gifts and inheritances. (Also section 170; 1.170A-1.)

Gifts; charitable contributions; Individual Development Accounts. This ruling holds that (1) interest earned by an Individual Development Account (IDA) project participant on funds deposited in the participant's personal account is currently includible in the participant's gross income under section 61 of the Code; (2) a project participant may exclude, as a gift under section 102, parallel funds paid for a qualified expense of the project participant; and (3) a donor may deduct under section 170 a contribution to a qualified entity for the qualified entity's IDA project, subject to the limitations of that section.

Rev. Rul. 99-44

ISSUES

(1) Is interest earned on funds deposited in the personal account of an Individual Development Account (IDA) project participant includible in the participant's gross income under § 61 of the Internal Revenue Code?

(2) May a project participant exclude, as a gift under § 102, parallel funds paid for a qualified expense of the project participant?

(3) May a donor deduct under § 170 a contribution to a qualified entity for an IDA project?

ASSETS FOR INDEPENDENCE ACT

Congress established a demonstration program to determine the effects of Individual Development Accounts ("IDAs") on low-income individuals and their fami-

lies. Assets for Independence Act, Pub. L. No. 105-285, Title IV (Oct. 27, 1998) ("Act"). The Act's purposes include stabilizing families and enabling individuals and families with limited means to increase their economic self-sufficiency. Section 403 of the Act.

IDAs are accounts created under the Act for use by eligible low-income individuals ("project participants") for qualified expenses, which are postsecondary educational expenses (*i.e.*, amounts paid for tuition, fees, books, supplies, and equipment), first-time home purchases, business capitalization, or the transfer of IDA funds directly into another IDA for the benefit of an eligible family member. Section 404(8) of the Act. Under § 408 of the Act, only individuals whose net worth and incomes are below certain levels are eligible to be selected as project participants. Project participants deposit earned income into a personal account, and a qualified entity provides matching contributions (or "parallel funds" as defined below) using Federal and non-Federal funds. "Qualified entity" includes an organization described in § 501(c)(3) of the Code. If a state or local government agency or tribal government submits an application jointly with the § 501(c)(3) organization, the state or local government agency or a tribal government is also a qualified entity. Section 404(7) of the Act.

A qualified entity other than a State or local government agency or tribal government must establish a Reserve Fund to hold all Federal and non-Federal funds received for the project and any investment income generated by the funds. Section 407 of the Act. The Reserve Fund is used to provide parallel funds for project participants, provide training and information to participants as necessary to their achieving economic self-sufficiency, administer the IDA demonstration project, and provide a research organization with relevant information.

An IDA for a project participant consists of two types of funds: "personal funds," and parallel funds. Under the IDA program, a separate custodial bank account ("personal account"), for which the qualified entity is the custodian, holds the deposits of the project participant.

Personal funds consist of these deposits and any interest earned on the funds in the personal account. Periodically, the qualified entity will note the amount of recent deposits made by a project participant into the participant's personal account. On the qualified entity's books for the Reserve Fund, the qualified entity will then allocate parallel funds to that participant. Parallel funds consist of (1) a matching amount that corresponds to the amount of the participant's recent deposits, and (2) interest.

Parallel funds remain in the complete control of the qualified entity until they are disbursed. They may be disbursed only for a qualified expense and only upon written request of the project participant and written approval of a responsible official of the qualified entity. Disbursements of parallel funds are made by the qualified entity directly to the "payee," which is the educational institution, the home seller, the business capitalization account, or the family member's IDA, as appropriate. Section 404(8) of the Act.

Personal funds may be withdrawn for a qualified expense upon written request of the project participant and written approval of a responsible official of the qualified entity. Personal funds may also be withdrawn for certain emergency uses specified in § 404(3) of the Act. Further, a project participant may withdraw personal funds for an expense that is not a qualified expense or an emergency use. However, such a withdrawal will terminate the participant's involvement in the IDA program, in which case any bookkeeping allocations of parallel funds to that participant will be reversed on the qualified entity's books. In all circumstances, personal funds (including all interest) are the property of the participant.

Under very limited circumstances described in section 413(b)(5)(B) of the Act, funds not distributed to project participants may be remitted to their sources pro rata. This would occur only if: (1) the Secretary of Health and Human Services ("HHS Secretary") determines that a qualified entity has not operated a project in accordance with its application or the requirements of the Act (and has not implemented any corrective recommendations directed by the HHS Secretary); and

(2) the HHS Secretary has not, within a 1-year period, found another qualified entity to conduct the project.

FACTS

The HHS Secretary selects *O*, a qualified entity under the Act and an entity described in § 170(c)(2) of the Code, to operate a demonstration project under the Act. *O* previously received a commitment of funds for the project from non-Federal sources. One such source is *DR*, a corporation, which contributes cash to *O* for the project. At the time of *DR*'s contribution, and throughout the life of the project, *O* operates the project in accordance with *O*'s application and the requirements of the Act. Pursuant to the Act, *O* receives funds for the project from the Federal government. *O* establishes a Reserve Fund to hold the Federal and non-Federal funds *O* receives for the project.

A, an individual, applies and is selected to be a project participant. As required by the project, *A* opens a personal account. *A* deposits earned income into the interest-bearing account each month. Every three months, *O* determines the total of *A*'s deposits for the preceding three months. On its books, *O* then allocates to *A* from the Reserve Fund a matching amount that corresponds to *A*'s deposits during the preceding three months and interest. Under the applicable state and local law, the parallel funds are beyond the reach of *A*'s creditors.

After participating in the project for three years, *A* incurs qualified expenses. *A* makes a written request to *O* for payment of the parallel and personal funds, and a responsible official of *O* gives written approval. *A*'s personal funds and the parallel funds allocated to *A* are paid directly to the payee. *O*'s payment on behalf of *A* to the payee was made with the intent to help stabilize *A*'s family and enable *A* to increase *A*'s economic self-sufficiency.

LAW AND ANALYSIS

Issue (1)

Section 61 of the Code provides that, except as otherwise provided by law, gross income means all income from whatever source derived. Section 61(a)(4) specifically includes interest in gross income.

As a general rule, interest earned by a taxpayer constitutes gross income and is fully taxable. Interest income includes interest on savings or other bank deposits. Section 1.61-7(a) of the Income Tax Regulations.

In the instant case, interest will be earned on the funds in *A*'s personal account. Those funds, including the interest, remain the property of *A* in all circumstances. The interest on funds in *A*'s personal account is currently includible in *A*'s gross income under § 61.

Issue (2)

Section 102 provides that the value of property acquired by gift is excluded from gross income. A gift "proceeds from a 'detached and disinterested generosity,' . . . 'out of affection, respect, admiration, charity or like impulses.'" *Commissioner v. Duberstein*, 363 U.S. 278, 285 (1960) (citations omitted). On the other hand, payments that proceed primarily from "the constraining force of any moral or legal duty" are not gifts. 363 U.S. at 285.

A determination of whether a transfer proceeds from detached and disinterested generosity requires an inquiry into the transferor's intention in making the payment. 363 U.S. at 285-86. Insight into a transferor's intention can be gained by examining the factors that the transferor considered in deciding whether to make the transfer and the form of the assistance. *See United States v. Kaiser*, 363 U.S. 299, 304 (1960). In general, a payment made by a charity to an individual that responds to the individual's needs, and does not proceed from any moral or legal duty, is motivated by detached and disinterested generosity.

In the instant case, *A* was eligible to participate in the project in part because *A*'s net worth and income were below levels set forth in the Act. Further, payments pursuant to the Act are designed to stabilize families and to enable individuals and families of limited means to increase their economic self-sufficiency. These facts indicate that *O* selected *A* to be a project participant and paid the parallel funds on behalf of *A* out of charitable and like impulses, and detached and disinterested generosity. Therefore, *O*'s payment of the parallel funds is excluded from *A*'s gross income as a gift under § 102.

Issue (3)

Section 170(a) allows as a deduction, subject to certain limitations, any charitable contribution, as defined in § 170(c), payment of which is made in the taxable year.

If a charity's ownership of property would be defeated by the subsequent happening of some event, but on the date of the gift the possibility of the event occurring appears to be so remote as to be negligible, the deduction is allowable. *See* § 1.170A-1(e).

In the instant case, *DR* contributed cash to *O*, an organization described in § 170(c)(2). At the time *DR* made this contribution, it was fully expected that *O* would operate the project in accordance with its application and the requirements of the Act. If *O* was unable to do so, the Secretary was permitted, within a 1-year period, to find another qualified entity to conduct the project. Therefore, at the time of the contribution, the possibility of any funds being returned to *DR* under § 413(b)(5)(B) of the Act was so remote as to be negligible.

Thus, *DR* may deduct under § 170 a contribution to *O* for *O*'s IDA demonstration project, subject to the limitations of that section.

HOLDINGS

(1) Interest earned by an IDA project participant on funds deposited in the participant's personal account is currently includible in the participant's gross income under § 61.

(2) A project participant may exclude, as a gift under § 102, parallel funds paid for a qualified expense of the project participant.

(3) A donor may deduct under § 170 a contribution to a qualified entity for the qualified entity's IDA project, subject to the limitations of that section.

DRAFTING INFORMATION

The principal author of this revenue ruling is Karin Gross of the Office of the Assistant Chief Counsel (Income Tax and Accounting). For further information regarding this revenue ruling contact Karin Gross at (202) 622-4930 (not a toll-free call).

Section 170.—Charitable, etc., Contributions and Gifts

*26 CFR 1.170A-1: Charitable, etc., contributions
and gifts; allowance of deduction.*

May a donor deduct under section 170 of the Code a contribution to a qualified entity for the qualified entity's Individual Development Account project, subject to the limitations of that section? See Rev. Rul. 99-44, page 549.

Part IV. Items of General Interest

Notice of Proposed Rulemaking and Notice of Public Hearing

Prevention of Abuse of Charitable Remainder Trusts

REG-116125-99

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that modify the application of the rules governing the character of certain distributions from a charitable remainder trust. These regulations are necessary to prevent taxpayers from using charitable remainder trusts to achieve inappropriate tax avoidance. The regulations affect charitable remainder trusts described in section 664 and certain beneficiaries of those trusts. This document also provides a notice of public hearing on these proposed regulations.

DATES: Written comments must be received by January 19, 2000. Requests to speak (with outlines of oral comments) at the public hearing scheduled for February 9, 2000, at 10 a.m. must be submitted by January 19, 2000.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG-116125-99), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG-116125-99), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option of the IRS Home Page, or by submitting comments directly to the IRS Internet site at: http://www.irs.ustreas.gov/tax_regs/regslst.html. The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Catherine Moore, (202) 622-3070; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Guy Traynor, (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

This document proposes to amend sections 643 and 664 of the Income Tax Regulations (26 CFR Part 1) to provide additional rules regarding charitable remainder trusts.

Background

Section 664, added to the Internal Revenue Code (Code) by section 201(e) of the Tax Reform Act of 1969 (Public Law 91-172, (83 Stat. 487, 562-64)), contains the rules for charitable remainder trusts. In general, a charitable remainder trust provides for a specified periodic distribution to one or more noncharitable beneficiaries for life or for a term of years, with an irrevocable remainder interest held for the benefit of charity. The amount distributed to the noncharitable beneficiaries may be either a sum certain, in the case of a charitable remainder annuity trust, or a fixed percentage of the net fair market value of the trust's assets valued annually, in the case of a charitable remainder unitrust. Section 664(b) provides rules for determining the character of amounts distributed by a charitable remainder trust in the hands of the beneficiary to whom the distribution is made. In general, a distribution is taxable to the beneficiary if it represents a distribution of ordinary income or capital gain of the trust. A distribution generally is not taxable to the beneficiary if it represents a distribution of tax-exempt income of the trust or of trust corpus. Section 664(c) provides that a charitable remainder trust is exempt from all taxes under subtitle A of the Code for any taxable year except a taxable year in which the trust has unrelated business taxable income under section 512.

Section 643(a)(7), added to the Code by section 1906(b) of the Small Business Job Protection Act of 1996 (Public Law

104-188, (110 Stat. 1755, 1915)), authorizes the Secretary of the Treasury to issue regulations that may be necessary or appropriate to carry out the purposes of the rules applicable to estates, trusts, and beneficiaries, including regulations to prevent the avoidance of those purposes.

Explanation of Provisions

A. *Tax-Avoidance Arrangements Using Charitable Remainder Trusts*

The IRS and the Treasury Department are aware of certain abusive transactions that attempt to use a section 664 charitable remainder trust to convert appreciated assets into cash while avoiding tax on the gain from the disposition of the assets. In these transactions, a taxpayer typically contributes highly appreciated assets to a charitable remainder trust having a relatively short term and relatively high payout rate. Rather than sell the assets to obtain cash to pay the annuity or unitrust amount to the beneficiary, the trustee borrows money, enters into a forward sale of the assets, or engages in some similar transaction. Because the borrowing, forward sale, or other similar transaction does not result in current income to the trust, the parties attempt to characterize the distribution of cash to the beneficiary as a tax-free return of corpus under section 664(b)(4). Distributions may continue to be funded in this manner for the duration of the trust term (which is usually short, so as to meet the 10-percent remainder requirement of section 664(d)(1)(D) or 664(d)(2)(D)). The appreciated assets may be sold and the transaction closed out (e.g., the loan is repaid) in the last year of the trust, or the trustee may distribute the appreciated assets, subject to a contractual obligation to complete the transaction (e.g., the forward sale contract), to the charitable beneficiary.

A mechanical and literal application of rules and regulations that would yield a result inconsistent with the purposes of the charitable remainder trust provisions will not be respected. When section 664 was amended by the Revenue Reconciliation Act of 1997, Congress indicated that

a scheme that, in effect, attempts to convert appreciated assets to a tax-free cash distribution to the non-charitable beneficiary is “abusive and is inconsistent with the purpose of the charitable remainder trust rules.” S. Rep. No. 33, 105th Cong., 1st Sess. 201 (1997). Although the particular scheme that was the focus of Congress’s attention in 1997 involved an attempt to exploit the interplay of rules under section 664 governing the timing of income and the character of trust distributions, the attempted result of the scheme (commonly referred to as an “accelerated charitable remainder trust”) was the same as that claimed by the promoters of the transactions described above—that is, a literal application of rules governing trust distributions in an attempt to convert appreciated trust assets into tax-free cash in the hands of the non-charitable beneficiary. The latest schemes involving charitable remainder trusts are no less “abusive” or “inconsistent with the purpose of the charitable remainder trust rules” than were the accelerated charitable remainder trust schemes addressed by Congress in 1997.

B. *The Proposed Regulations*

Section 643(a)(7) authorizes the Secretary to prescribe regulations to carry out the purposes of the provisions of the Code relating to the taxation of estates, trusts, and beneficiaries, including regulations to prevent avoidance of such purposes. The proposed regulations exercise this authority by modifying the treatment of certain distributions by charitable remainder trusts for purposes of section 664(b) to prevent a result that, as discussed above, is inconsistent with the purposes of the charitable remainder trust rules.

The proposed regulations provide that, to the extent that a distribution of the annuity or unitrust amount from a charitable remainder trust is not characterized in the hands of the recipient as income from the categories described in section 664(b)(1), (2), or (3) (determined without regard to the rules in these proposed regulations) and was made from an amount received by the trust that was neither a return of basis in any asset sold by the trust (determined without regard to the rules in these proposed regulations) nor attributable to a contribution of cash to the trust with re-

spect to which a deduction was allowable under section 170, 2055, 2106, or 2522, the trust shall be treated as having sold, in the year for which the distribution is due, a pro rata portion of the trust assets. Any transaction that has the purpose or effect of circumventing this rule will be disregarded. For example, a return of basis in an asset sold by a charitable remainder trust does not include basis in an asset purchased by the charitable remainder trust from the proceeds of a borrowing secured by previously contributed assets.

The proposed regulations include examples that illustrate the application of the above rule. The IRS and the Treasury Department request comments on whether there are situations where the application of this rule would be inappropriate.

These proposed regulations adopt a pro-rata sale approach to determine the amount of gain on the distribution of funds acquired in advance of income recognition. The IRS and the Treasury Department also considered an approach that more directly related the distributed funds to the asset that is the subject of the borrowing or forward sale. Comments are requested on this alternative approach.

C. *Proposed Effective Date*

The regulations are proposed to apply to distributions made by charitable remainder trusts after October 18, 1999.

However, to the extent that a charitable remainder trust financed a distribution to a beneficiary by borrowing funds or entering into a forward sale or other similar transaction prior to the effective date of these regulations, the IRS may apply an appropriate legal doctrine to recast the entire transaction, to characterize the distribution as gross income rather than corpus, or to challenge the qualification of the trust under section 664. In appropriate circumstances, the IRS may impose the tax on self-dealing transactions under section 4941. Additionally, the trust may be treated as having unrelated business taxable income under section 512 from the transaction. The IRS will also apply any applicable penalties to the participants in the transaction.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a signifi-

cant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the understanding of the IRS and Treasury Department that the number of charitable remainder trusts engaging in transactions affected by these regulations is not substantial, and none are small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. chapter 6). Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (preferably a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and the Treasury Department specifically request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for February 9, 2000, at 10 a.m. in room 2615, Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the “FOR FURTHER INFORMATION CONTACT” section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons that wish to present oral comments at the hearing must submit timely written comments and an

outline of the topics to be discussed and the time to be devoted to each topic (preferably a signed original and eight (8) copies) by January 19, 2000.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these regulations are Mary Beth Collins and Catherine Moore, Office of Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.643(a)–8 also issued under 26 U.S.C. 643(a)(7). * * *

Par. 2. Section 1.643(a)–8 is added to read as follows:

§1.643(a)–8 Certain distributions by charitable remainder trusts.

(a) *Purpose and scope.* This section is intended to prevent the avoidance of the purposes of the charitable remainder trust rules and should be interpreted in a manner consistent with this purpose. This section applies to all charitable remainder trusts described in section 664 and the beneficiaries of such trusts.

(b) *Deemed sale by trust.* (1) For purposes of section 664(b), a charitable remainder trust shall be treated as having sold, in the year for which a distribution of an annuity or unitrust amount from the trust is due, a pro rata portion of the trust assets to the extent that the distribution of the annuity or unitrust amount—

(i) Is not characterized in the hands of the recipient as income from the cate-

gories described in section 664(b)(1), (2), or (3), determined without regard to this paragraph (b); and

(ii) Was made from an amount received by the trust that was not—

(A) A return of basis in any asset sold by the trust, determined without regard to this paragraph (b); or

(B) Attributable to cash contributed to the trust with respect to which a deduction was allowable under section 170, 2055, 2106, or 2522.

(2) Any transaction that has the purpose or effect of circumventing the rules in this paragraph (b) shall be disregarded.

(3) For purposes of paragraph (b)(1) of this section, “trust assets” do not include cash or assets purchased with the proceeds of a trust borrowing, forward sale, or similar transaction.

(4) Proper adjustment shall be made to any gain or loss subsequently realized for gain or loss taken into account under paragraph (b)(1) of this section.

(c) *Examples.* The following examples illustrate the rules of paragraph (b) of this section:

Example 1. Deemed sale by trust. Donor contributes stock having a fair market value of \$2 million to a charitable remainder unitrust with a unitrust amount of 50 percent of the net fair market value of the trust assets and a two-year term. The stock has a total basis of \$400,000. In Year 1, the trust receives dividend income of \$20,000. As of the valuation date, the trust’s assets have a net fair market value of \$2,020,000 (\$2 million in stock, plus \$20,000 in cash). To obtain additional cash to pay the unitrust amount to the noncharitable beneficiary, the trustee borrows \$990,000 against the value of the stock. The trust then distributes \$1,010,000 to the beneficiary before the end of Year 1. Under section 664(b)(1), \$20,000 of the distribution is characterized in the hands of the beneficiary as dividend income. The rest of the distribution, \$990,000, is attributable to an amount received by the trust that did not represent either a return of basis in any asset sold by the trust (determined without regard to paragraph (b) of this section) or a cash contribution to the trust with respect to which a charitable deduction was allowable. Under paragraph (b)(3) of this section, the stock is a trust asset because it was not purchased with the proceeds of the borrowing. Therefore, in Year 1, under paragraph (b)(1) of this section, the trust is treated as having sold \$990,000 of stock and as having realized \$792,000 of capital gain (the trust’s basis in the shares deemed sold is \$198,000). Thus, in the hands of the beneficiary, \$792,000 of the distribution is characterized as capital gain under section 664(b)(2) and \$198,000 is characterized as a tax-free return of corpus under section 664(b)(4).

Example 2. Adjustment to trust’s basis in assets deemed sold. The facts are the same as in Example 1. During Year 2, the trust sells the stock for

\$2,100,000. The trustee uses a portion of the proceeds of the sale to repay the outstanding loan, plus accrued interest. Under paragraph (b)(4) of this section, the trust’s basis in the stock is \$1,192,000 (\$400,000 plus the \$792,000 of gain recognized in Year 1). Therefore, the trust recognizes capital gain (as described in section 664(b)(2)) in Year 2 of \$908,000.

Example 3. Distribution of cash contributions. Upon the death of D, the proceeds of a life insurance policy on D’s life are payable to T, a charitable remainder annuity trust. The terms of the trust provide that, for a period of three years commencing upon D’s death, the trust shall pay an annuity amount equal to \$x annually to A, the child of D. After the expiration of such three-year period, the remainder interest in the trust is to be transferred to charity Z. In Year 1, the trust receives payment of the life insurance proceeds and pays the appropriate pro rata portion of the \$x annuity to A from the insurance proceeds. During Year 1, the trust has no income. Because the entire distribution is attributable to a cash contribution (the insurance proceeds) to the trust for which a charitable deduction was allowable under section 2055 with respect to the present value of the remainder interest passing to charity, the trust will not be treated as selling a pro rata portion of the trust assets under paragraph (b)(1) of this section. Thus, the distribution is characterized in A’s hands as a tax-free return of corpus under section 664(b)(4).

(d) *Effective date.* This section is applicable to distributions made by a charitable remainder trust after October 18, 1999.

Par. 3. Section 1.664-1 is amended as follows:

1. Paragraph (d)(1)(iii) is redesignated as paragraph (d)(1)(iv).

2. New paragraph (d)(1)(iii) is added.

The addition reads as follows:

§1.664-1 Charitable remainder trusts.

* * * * *

(d) * * *

(1) * * *

(iii) Application of section 643(a)(7).

For application of the anti-abuse rule of section 643(a)(7) to distributions from charitable remainder trusts, see §1.643(a)–8.

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Time for Recharacterizing 1998 IRA Contributions

Announcement 99-104

Purpose

The first year for which Roth IRAs could be established was 1998. It has come to the attention of the Internal Revenue Service and Treasury that taxpayers have experienced particular difficulty in properly applying the rules governing Roth IRA conversion contributions and recharacterizations. In view of the tax consequences of excess IRA contributions, the Service and Treasury believe that additional time should be provided for taxpayers who made 1998 Roth IRA conversion contributions or other 1998 IRA contributions and who would like to recharacterize those contributions.

This announcement provides relief to taxpayers who would like to recharacterize 1998 IRA contributions, including amounts contributed to Roth IRAs as conversions when the taxpayers were not eligible. Pursuant to this announcement, these taxpayers have until the end of 1999 to recharacterize their 1998 IRA contributions.

Background

Section 408A(d)(6) of the Internal Revenue Code and § 1.408A-5 of the regulations provide that, except as otherwise provided by the Secretary, a taxpayer may elect to recharacterize an IRA contribution made to one type of IRA as having been made to another type of IRA by making a trustee-to-trustee transfer of the IRA contribution, plus earnings, to the other type of IRA. In a recharacterization, the IRA contribution is treated as having been made to the transferee IRA and not the transferor IRA. Under § 408A(d)(6) and § 1.408A-5, this recharacterization election generally must occur on or before the date prescribed by law, including extensions, for filing the taxpayer's Federal income tax return for the year of the contribution.

Section 1.408A-5, Q&A-6, describes how a taxpayer makes the election to recharacterize an IRA contribution. To recharacterize an amount that has been converted from a traditional IRA to a Roth IRA: (1) the taxpayer must notify

the Roth IRA trustee of the taxpayer's intent to recharacterize the amount, (2) the taxpayer must provide the trustee (and the transferee trustee, if different from the transferor trustee) with specified information that is sufficient to effect the recharacterization transfer, and (3) the trustee must make the transfer.

Section 301.9100-2(b) of the regulations generally provides for an automatic extension of 6 months from the due date of a return, excluding extensions, to make elections that otherwise must be made by the due date of the return or the due date of the return plus extensions, provided (1) the taxpayer's return was timely filed for the year the election should have been made and (2) the taxpayer takes appropriate corrective action within this 6-month period. Announcement 99-57, 1999-24 I.R.B. 50 (June 14, 1999) describes the application of § 301.9100-2(b) to recharacterization elections.

Extension of Time to Recharacterize 1998 IRA Contributions

Pursuant to § 408A(d)(6), a taxpayer will be deemed to have timely made an otherwise valid recharacterization of a 1998 IRA contribution, including a Roth IRA conversion for which the taxpayer was not eligible, if (1) the recharacterization occurs on or before December 31, 1999, (2) the taxpayer timely filed his or her 1998 Federal income tax return, and (3) the taxpayer files an amended 1998 return if the recharacterization is not properly reflected on the previously filed return.

Effect on Other Documents

Announcement 99-57 is modified.

Foundations Status of Certain Organizations

Announcement 99-105

The following organizations have failed to establish or have been unable to maintain their status as public charities or as operating foundations. Accordingly, grantors and contributors may not, after this date, rely on previous rulings or designations in the Cumulative List of Organizations (Publication 78), or on the presumption arising from the filing of notices

under section 508(b) of the Code. This listing does *not* indicate that the organizations have lost their status as organizations described in section 501(c)(3), eligible to receive deductible contributions.

Former Public Charities. The following organizations (which have been treated as organizations that are not private foundations described in section 509(a) of the Code) are now classified as private foundations:

ABC Program, Buckley, WA
Action for Peace Foundation, Greenwich, CT
Advancing Community Education, Inc., Portland, OR
Amana Foundation, San Diego, CA
Amazing Grace International Multi-Culture Exchange Program, Mattapan, MA
American Foundation for the Visual Arts, Inc., Plainview, NY
American Help for the Blind Fund, Inc., Centerport, NY
American Youth Pathfinders, Inc., Farmers Branch, TX
American Youth Performing Alliance, Inc., Dayton, OH
Archuleta County Civic Center, Pagosa Springs, CO
Bayou Indian Federation, Inc., Elton, LA
Brain Baton Rouge Area Interactive Network, Inc., Baton Rouge, LA
Cancer Prevention and Treatment Research Institute of Arizona, Fountain Hills, AZ
Capital Pullers, Inc., Madison, WI
Center for Traffic Safety and Education, Inc., Lima, OH
Chance English Spanish Publication, Houston, TX
Chelsea Gardens Foundation, Inc., Norwich, CT
Chelsea Street Foundation, Inc., Murray, UT
Cherry Drive Elementary School Parent-Teacher Partnership, Thornton, CO
Chicago Tax Law Assistance Project, River Forest, IL
CJC Services Corporation, Tallahassee, FL
Codependency New Life Seminars, Inc., Dublin, CA
Coming Together To Help Promotions, Inc., Philadelphia, PA
Conservation, Inc., Norfolk, VA
Convivium Educational Foundation, Costa Mesa, CA

Cut Bank Elks Lodge Charitable Corp.,
Cut Bank, MT

Down to Earth, Fort Wayne, IN

EBN Holding, Inc., Columbia, MD

Ecology, Inc., Salt Lake City, UT

Episcopal Day School Foundation, Inc.,
Tallahassee, FL

Epperson Foundation, Montgomery, AL

Faith-Way Ministries, Inc., New
Washington, IN

Faye Carney Gehl Conservation Trust,
Inc., Hartland, WI

Foundation for Applied Research in
Visual Disabilities, Arlington Heights,
IL

Foundation for Human Helps, Metairie,
LA

Friends of Italian Historic Houses, Inc.,
New York, NY

Geneva Foundation, Chicago, IL

German Cultural Foundation, Commerce
City, CO

Global Awareness Foundation, Chicago,
IL

Good Ole' Boys, Cincinnati, OH

Grace Fund, Inc., Wooster, OH

Graville Heights, Inc., Chicago, IL

Great Commission News, Inc.,
Cleveland, TX

Greater Whitestone Missionary Baptist
Church Foundation, Inc., Memphis,
TN

Great River Foundation Inc., Natchez,
MS

Happy Pet Owners Nonprofit
Organization., Stockton, CA

Harberfest, Incorporated, Norfolk, VA

Harvest Farms, Inc., Clayton, IN

Highlandtown Cooperative Senior
Housing, Inc., Oak Park, MI

Hogar Crea International of New Jersey,
Inc., Jersey City, NJ

Home of the Alliance, Inc. Brooklyn, NY

Home Safe, Puyallup, WA

Hope & Help, Inc., Riverside, CA

Igbotek Institute of Educational Services,
Inc., Brooklyn, NY

Information Roads Foundation, Inc.,
Waltham, MA

In Recital, Fort Worth, TX

Institute for Basic Change, Chicago, IL

Institute for Ethics and Health Policy,
Inc., Berkeley, CA

International Salute to Greatness, Palm
Springs, CA

International Volunteer Expeditions,
Sacramento, CA

Jerome Park Conservancy, Bronx, NY

Kentucky Elks Association Charitable
Trust, Cold Spring, KY

Kilohana Resident Council, Kaneohe, HI

Kotel Museum Fund, Inc., Brooklyn, NY

Law Enforcement Support Foundation,
Brooklyn, NY

The Lee County Housing Corp., Inc.,
Jonesville, VA

Lifeline Humanitarian Organization,
Chicago, IL

McCoy Wildcats, Bond, CO

Metro Town Redevelopment Coalition,
Inc., Jackson, MS

Mountair Junior Baseball Association,
Lakewood, CO

National Health Foundation, Inc.,
Atlanta, GA

National Union Veterans Foundation of
Ohio, Columbus, OH

Nehemiah Ministries, Charleston, SC

New Yorkers for School Choice Research
& Education Committee, Inc.,
Hempstead, NY

New York State Center for Philosophy &
Communication, Inc., Albany, NY

Ohio Turfgrass Research Trust, Inc.,
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Ohio War Memorial, Inc., Perrysburg,
OH

Oklahoma Safety Center, Inc., Tulsa,
OK

Okner Foundation, Inc., Chicago, IL

Omega Development Corporation, Little
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Pan International Co-Pan Family Center
for Women and Children, Newark,
OH

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Pike Animal Welfare Society, Inc.,
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Point of Decision, Inc., Columbus, OH

Rainbow Friends Child Care Center, Inc.,
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The Riley Foundation, Meridian, MS

Roger J. Gill Memorial Fund, Inc.,
Seattle, WA

R. Robert Funderburg Educational Trust,
Belvidere, IL

Santa Maria Trails & Parks Association,
Beverly Hills, CA

Scott MacDonald Memorial Fund, San
Diego, CA

The Scriptorium, Wheaton, IL

Servants for Jesus Christ, Cleveland, TN

Share Golf, Inc., Skokie, IL

Showers of Blessings Ministry, Inc.,
Nashville, TN

Simon Foundation, Inc., Dallas, TX

Sisters Overcoming Struggles, Detroit,
MI

Solutions & Possibilities, Inc., Columbus,
OH

Stephen E. Packard, Jr. Memorial Fund,
Marlborough, NH

Stepping Stones Educational Systems,
Fort Wayne, IN

St. John-Endicott Cooperative Schools
Foundation, St. John, WA

Sustain America Federation, Inc., Napa,
CA

Sustainable Rural Visions, Inc., Cokato,
MN

Third Shiloh Housing, Inc., New Orleans,
LA

United Environment Fund, Fairfield, IA

United Human Services Agency, Inc.,
Murray Hill Station, NY

U.S. Africa Trade Alliance, Inc.,
Henderson, NC

W. Dean Moore Ministries, Inc., Lindsay,
OK

West Grace Street Association,
Richmond, VA

The Winning Tree, Incorporated,
Washington, DC

World Travel & Tourism Council USA,
Inc., Washington, DC

Worthington Center Management
Company, Inc., Parkersburg, WV

Wren Family Day Care Center, Inc.,
Memphis, TN

Yemen American Cultural Center, Inc.,
Dearborn, MI

Youth Services America Corporation,
Ellicott City, MD

If an organization listed above submits information that warrants the renewal of its classification as a public charity or as a private operating foundation, the Internal Revenue Service will issue a ruling or determination letter with the revised classification as to foundation status. Grantors and contributors may thereafter rely upon such ruling or determination letter as provided in section 1.509(a)-7 of the Income Tax Regulations. It is not the practice of the Service to announce such revised classification of foundation status in the Internal Revenue Bulletin.

Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it ap-

plies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in law or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in the new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the

new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C.—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.

E.O.—Executive Order.
ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contribution Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign Corporation.
G.C.M.—Chief Counsel's Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.

PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statements of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

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Key to Abbreviations:

Ann	Announcement
RR	Revenue Ruling
RP	Revenue Procedure
TD	Treasury Decision
CD	Court Decision
PL	Public Law
EO	Executive Order
DO	Delegation Order
TDO	Treasury Department Order
TC	Tax Convention
SPR	Statement of Procedural Rules
PTE	Prohibited Transaction Exemption

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