

Guidance Regarding Section 664 Regulations

Notice 99-31

This notice informs taxpayers that the deadline for special reformations of charitable remainder unitrusts (CRUTs) provided in § 1.664-3(a)(1)(i)(f)(3) of the Income Tax Regulations will be extended from June 8, 1999, until June 30, 2000. This notice also explains that the term “legal proceedings” in § 1.664-3(a)(1)(i)(f)(3) includes certain non-judicial reformations provided they are completed by June 30, 2000.

BACKGROUND

Section 1.664-3(a)(1)(i)(c) contains the rules for CRUTs that use a combination of methods to compute the unitrust amount. If certain requirements are satisfied, the governing instrument of a CRUT may provide that the unitrust amount is computed using one of the income exception methods during an initial period and thereafter using the fixed percentage method (flip provision). The same fixed percentage must be used throughout the term of the CRUT.

Under § 1.664-3(a)(1)(i)(f)(1), the flip provision is available for CRUTs created on or after December 10, 1998. However, § 1.664-3(a)(1)(i)(f)(3) permits reformations of a CRUT whose governing instrument either contains an impermissible flip provision or uses only one of the income exception methods. Such a CRUT may be reformed to include a permitted flip provision if the trustee begins legal proceedings to reform by June 8, 1999.

DISCUSSION

Since the issuance of § 1.664-3(a)(1)(i)(f)(3), a number of practitioners have requested additional time to begin legal proceedings to reform a CRUT. The Treasury Department and the Service also understand that there may be state law impediments to meeting the June 8, 1999, deadline. In response, the Treasury Department and the Service intend to amend § 1.664-3(a)(1)(i)(f)(3) to extend the June 8, 1999, deadline to June 30, 2000.

Many practitioners have also inquired whether the term “legal proceedings” in § 1.664-3(a)(1)(i)(f)(3) requires a judicial reformation if non-judicial reformations are permitted under state law. The Treasury Department and the Service will clarify that the term “legal proceedings” includes a non-judicial reformation that is valid under state law, but that a non-judicial reformation must be completed by June 30, 2000.

Taxpayers seeking a non-judicial reformation should ascertain what their state law requires for such a reformation to be valid. For example, in some states, a non-judicial reformation requires the consent of all beneficiaries, including potential beneficiaries. In addition, in some states, the state’s Attorney General has jurisdiction over charitable remainder trusts and must be notified of or consent to a reformation on behalf of the named or unnamed charitable beneficiaries. In some cases, the state’s Attorney General may more closely oversee charitable remainder trusts in which the specific charitable organization is not named in the governing instrument or is subject to change by the grantor or another person.

EFFECTIVE DATE

The amendments to § 1.664-3(a)(1)(i)(f)(3) described in this notice will be effective December 10, 1998.

DRAFTING INFORMATION

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