

## **Private Letter Ruling 9225036, 3/25/1992, IRC Sec(s).**

Dear \*\*\*

This is in response to a letter dated November 20, 1991, from your authorized representative concerning a proposed charitable remainder unitrust. Specifically, the following rulings have been requested: (1) that South African Krugerrand gold coins are not tangible personal property within the meaning of section 170(a)(3) of the Internal Revenue Code; (2) that the taxpayer will not recognize gain upon the contribution of the South African Krugerrand gold coins to the proposed trust; (3) that the proposed trust will qualify as a charitable remainder unitrust under section 664; (4) that upon the transfer of the Krugerrands to the trust, the taxpayer will be entitled to the applicable income and gift tax charitable deductions for the present value of the charitable remainder interest; and (5) that the taxpayer's estate will be entitled to claim an estate tax charitable deduction for the value of the trust property valued at the taxpayer's death.

The taxpayer proposes to establish a trust intended to qualify as a charitable remainder unitrust. He will retain a unitrust interest for life, and the remainder will be paid to an organization described in section 170(c) of the Code. An organization related to the charitable remainderman is the trustee of the trust. The taxpayer has owned 740 South African Krugerrand gold coins for more than one year that he proposes to transfer to the trust. For purposes of this ruling, we will assume that the taxpayer's basis in the gold coins is less than their fair market value.

Under the terms of the governing instrument, the trustee is authorized to retain, sell, invest, or reinvest the assets of the trust in any kind of property except it may not invest in property lacking an objective, ascertainable market value, such as real estate and stock in a closely held corporation.

Section 170(a)(3) of the Code and section 1.170A-5 of the Income Tax Regulations provide, in part, that a charitable contribution which consists of a future interest in tangible personal property shall be treated as made only when all intervening interests in the property have expired or are held by persons unrelated to the taxpayer.

Rev. Rul. 69-63, 1969-1 C.B. 63, holds that, for purposes of the predecessor to section 170(a)(3), a collection of rare coins held not primarily as a medium of exchange but as collector's items is tangible personal property. The ruling also holds that cash is not tangible personal property within the meaning of the statute.

South African Krugerrand gold coins are more akin to money than to coins that have value as collector's items. South African Krugerrand gold coins are one of the best known types of gold bullion coins. They have no numismatic value. Moreover, in the case at hand, the trustee is authorized to dispose of the coins. Therefore, pursuant to the rationale of Rev. Rul. 69-63, we conclude that the South African Krugerrand gold coins are not tangible personal property within the meaning of section 170(a)(3) of the Code.

We also conclude that provided there is no express or implied obligation imposed upon the trustee to sell or exchange the coins, the taxpayer will not realize income on his contribution of the appreciated coins to the trust.

A ruling has been requested that the proposed trust will qualify as a charitable remainder unitrust within the meaning of section 664 of the Code. Pursuant to Rev. Proc. 92-3,

1992-1 I.R.B. 55, the Internal Revenue Service no longer issues rulings concerning whether a charitable remainder unitrust for one or two measuring lives satisfies the requirements described in section 664. Also, pursuant to Rev. Proc. 92-3, the Service no longer issues rulings concerning whether a transfer to such trust qualifies for a charitable deduction under section 170(f)(2)(A), an estate tax charitable deduction under section 2055(e)(2)(A), or a gift tax charitable deduction under section 2522(c)(2)(A).

In lieu of seeking the Service's advance approval of a charitable remainder unitrust, taxpayers are directed to follow the sample provisions for charitable remainder unitrusts outlined in Rev. Proc. 90-31, 1990-1 C.B. 539. By following the models contained in Rev. Proc. 90-31, taxpayers can be assured that the Service will recognize a trust as meeting all of the requirements of a qualified charitable remainder unitrust, provided that the trust operates in a manner consistent with the terms of the trust instrument and provided that it is a valid trust under local law.

Therefore, as to ruling requests 3, 4, and 5, we will only rule on whether the proposed trust's qualification will be adversely affected by the transfer of South African Krugerrand gold coins if the proposed trust otherwise qualifies as a valid charitable remainder unitrust.

Section 1.664-1(a)(4) of the regulations provides that in order for a trust to be a charitable remainder trust, it must meet the definition of and function exclusively as a charitable remainder trust from the creation of the trust. Section 1.664-1(a)(3) of the regulations provides that a trust is not a charitable remainder trust if the provisions of the trust include a provision which restricts the trustee from investing the trust assets in a manner which could result in the annual realization of a reasonable amount of income or gain from the sale or disposition of trust assets.

In accordance with the regulations, the proposed trust agreement provides: "Nothing in this Agreement shall be construed to restrict the Trustee from investing the unitrust assets in a manner which could result in the annual realization of a reasonable amount of income or gain from the sale or disposition of trust assets." Therefore, we conclude that proposed trust's qualification will not be adversely affected by the transfer of South African Krugerrand gold coins if the proposed trust otherwise qualifies as a valid charitable remainder unitrust. Compare Rev. Rul. 73-610, 1973-2 C.B. 213.

Except as we have specifically ruled herein, we express no opinion as to tax consequences of the transaction under the cited provisions of the Code or under any other provisions of the Code.

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

A copy of this letter should be attached to the federal tax return for the tax year that the proposed trust is established. A copy of this letter is enclosed for that purpose.

In accordance with the power of attorney submitted, a copy of this ruling is being sent to your authorized representatives.

Sincerely yours,

Frances D. Schafer

Senior Technician Reviewer

Branch 3

Office of Assistant Chief Counsel

(Passthroughs and Special

Industries)

Enclosures (2)

Copy of this letter

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