

(f)(7)(i) and (f)(7)(ii)(A) to read as follows:

§ 1.1502-13 Intercompany transactions.

(c) * * *

(6) * * *

(ii) * * *

(C) [The text of proposed § 1.1502-13(c)(6)(ii)(C) is the same as the text of § 1.1502-13T(c)(6)(ii)(C) published elsewhere in this issue of the **Federal Register**].

(1) [The text of proposed § 1.1502-13(c)(6)(ii)(C)(1) is the same as the text of § 1.1502-13T(c)(6)(ii)(C)(1) published elsewhere in this issue of the **Federal Register**].

(C)(2) [The text of proposed § 1.1502-13(c)(6)(ii)(C)(2) is the same as the text of § 1.1502-13T(c)(6)(ii)(C)(2) published elsewhere in this issue of the **Federal Register**].

(C)(2)(i) [The text of proposed § 1.1502-13(c)(6)(ii)(C)(2)(i) is the same as the text of § 1.1502-13T(c)(6)(ii)(C)(2)(i) published elsewhere in this issue of the **Federal Register**].

* * * * *

(f) * * *

(7) [The text of proposed § 1.1502-13(f)(7) is the same as the text of § 1.1502-13T(f)(7) published elsewhere in this issue of the **Federal Register**].

(i) [The text of proposed § 1.1502-13(f)(7)(i) is the same as the text of § 1.1502-13T(f)(7)(i) published elsewhere in this issue of the **Federal Register**].

(ii) [The text of proposed § 1.1502-13(f)(7)(ii) is the same as the text of § 1.1502-13T(f)(7)(ii) published elsewhere in this issue of the **Federal Register**].

(A) [The text of proposed § 1.1502-13(f)(7)(ii)(A) is the same as the text of § 1.1502-13T(f)(7)(ii)(A) published elsewhere in this issue of the **Federal Register**].

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Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-127391-07]

RIN 1545-BH02

Guidance Under Section 664 Regarding the Effect of Unrelated Business Taxable Income on Charitable Remainder Trusts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of hearing.

SUMMARY: This document contains proposed regulations that provide guidance under Internal Revenue Code (Code) section 664 on the tax effect of unrelated business taxable income (UBTI) on charitable remainder trusts. The proposed regulations reflect the changes made to section 664(c) by section 424(a) and (b) of the Tax Relief and Health Care Act of 2006. The proposed regulations affect charitable remainder trusts that have UBTI in taxable years beginning after December 31, 2006. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by May 6, 2008. Outlines of topics to be discussed at the public hearing scheduled for April 11, 2008, must be received by March 28, 2008.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-127391-07), Room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-127391-07), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC; or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-127391-07).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Cynthia Morton at (202) 622-3060; concerning submissions of comments, the hearing, and/or access list to attend the hearing, contact Richard Hurst at (202) 622-7180 (not toll-free numbers) or e-mail at Richard.A.Hurst@irs.counsel.treas.gov.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP; Washington, DC 20224. Comments on the collection of information should be received by May 6, 2008.

Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collection of information in the proposed regulation is in § 1.664-1(c). This information is required to report the excise tax imposed by section 664(c) of the Code. The likely respondents are trustees of charitable remainder trusts.

Estimated total annual reporting and/or recordkeeping burden: 50 hours.

Estimated average annual burden per respondent and/or recordkeeper: .5 hours.

Estimated number of respondents and/or recordkeepers: 100.

Estimated annual frequency of responses: Once.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books and records relating to a collection of information must be retained as long as their contents may

become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

For taxable years beginning before January 1, 2007, section 664(c) provided that a charitable remainder trust (whether a charitable remainder annuity trust or a charitable remainder unitrust) would not be exempt from income tax for any year in which the trust had any UBTI (within the meaning of section 512). Instead, such trust was taxed for each such year under subchapter J as though it were a nonexempt, complex trust. The proposed regulations reflect the changes to section 664(c) made by section 424 of the Tax Relief and Health Care Act of 2006 (Act) Public Law 109-432, 120 Stat. 2922. Section 424(a) of the Act, which applies to taxable years beginning after December 31, 2006, provides that charitable remainder trusts that have UBTI remain exempt from Federal income tax, but imposes a 100-percent excise tax on their UBTI. Pursuant to section 664(c)(2)(A), the amount of UBTI is determined pursuant to section 512. Under section 512, UBTI is computed with the modifications in section 512(b) including the \$1,000 deduction in section 512(b)(12). The excise tax imposed under section 664(c)(2)(A) is treated as imposed under the excise tax rules that apply to private foundations and other tax-exempt organizations, other than the rules for abatement of first and second-tier taxes (chapter 42, other than subchapter E of chapter 42).

Pursuant to section 664(b), distributions from a charitable remainder trust for the year that the annuity or unitrust amount is required to be distributed are treated in the following order as: (1) Ordinary income to the extent of the trust's ordinary income for that year and undistributed ordinary income for all prior years; (2) Capital gains to the extent of the trust's capital gain for that year and undistributed capital gain for all prior years; (3) Other income (for example, tax-exempt income) to the extent of the trust's other income for that year and undistributed other income for all prior years; and (4) Corpus.

For purposes of determining the character of the distribution made to the beneficiary, the charitable remainder trust income that is UBTI is considered income of the trust. Specifically, income of the charitable remainder trust is allocated among the trust income categories in Treasury Regulation § 1.664-1(d)(1) without regard to

whether any part of that income constitutes UBTI under section 512. Section 1.664-1(d)(1) assigns charitable remainder trust income to one of three categories (ordinary income, capital gains, or other income) in the year in which it is required to be taken into account by the trust.

Explanation of Provisions

The proposed regulations amend the regulations under section 664(c) to provide that charitable remainder trusts with UBTI in taxable years beginning after December 31, 2006, are exempt from Federal income tax, but are subject to a 100-percent excise tax on the UBTI of the charitable remainder trust. The proposed regulations provide that the excise tax is reported and payable in accordance with the appropriate forms and instructions. Currently, the appropriate form to report and pay the excise tax on charitable remainder trusts with UBTI is Form 4720, "Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code." The rules that apply with respect to charitable remainder trusts that have UBTI in taxable years beginning before January 1, 2007, are contained in § 1.664-1(c) as in effect for taxable years beginning before January 1, 2007. (See 26 CFR part 1 § 1.664-1(c) revised as of April 2, 2007).

The proposed regulations clarify that, consistent with § 1.664-1(d)(2), the excise tax imposed upon a charitable remainder trust with UBTI is treated as paid from corpus and the trust income that is UBTI is income of the trust for purposes of determining the character of the distribution made to the beneficiary. The proposed regulations provide examples illustrating the tax effects of UBTI on a charitable remainder trust for taxable years beginning after December 31, 2006. Finally, the proposed regulations amend § 1.664-1(d)(2) to conform with section 424 of the Act.

Proposed Effective Date

The proposed regulations are proposed to be effective for taxable years beginning after December 31, 2006.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to the regulations. It is hereby certified that the collection of information in these regulations will not have a

significant economic impact on a substantial number of small entities. This certification is based upon the fact that any burden on taxpayers is minimal. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601) (RFA) 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 (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for April 11, 2007, at 10 a.m., in the IRS Auditorium, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures visitors must enter at the Constitution Avenue entrance. 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 30 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 who wish to present oral comments at the hearing must submit electronic or written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by March 28, 2007. 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 author of the proposed regulations is Cynthia Morton, Office of the Associate Chief Counsel (Passthroughs and Special Industries).

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

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 continues to read in part as follows:

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

Par. 2. Section 1.664–1 is amended as follows:

1. In paragraph (a)(1)(i), the last sentence is revised and a sentence is added to the end of the paragraph.

2. Paragraph (c) is revised.

3. In paragraph (d)(2), the fourth sentence is revised.

The revisions and addition read as follows:

§ 1.664–1 Charitable remainder trusts.

(a) * * * (1) * * * (i) * * * A trust created after July 31, 1969, which is a charitable remainder trust, is exempt from all of the taxes imposed by subtitle A of the Code for any taxable year of the trust, except a taxable year beginning before January 1, 2007, in which it has unrelated business taxable income. For taxable years beginning after December 31, 2006, an excise tax, treated as imposed by chapter 42, is imposed on charitable remainder trusts that have unrelated business taxable income. See paragraph (c) of this section.

* * * * *

(c) *Excise Tax on Charitable Remainder Trusts*—(1) *In general.* For each taxable year beginning after December 31, 2006, in which a charitable remainder annuity trust or a charitable remainder unitrust has any unrelated business taxable income, an excise tax is imposed on that trust in an amount equal to the amount of such unrelated business taxable income. For this purpose, unrelated business taxable income is as defined in section 512, determined as if part III, subchapter F, chapter 1 subtitle A of the Internal Revenue Code applied to such trust. Such excise tax is treated as imposed by chapter 42 (other than subchapter E) and is reported and payable in accordance with the appropriate forms and instructions. Such excise tax shall be allocated to corpus and, therefore, is not deductible in determining taxable income distributed to a beneficiary. (See paragraph (d)(2) of this section.) The charitable remainder trust income that is unrelated business taxable income

constitutes income of the trust for purposes of determining the character of the distribution made to the beneficiary. Income of the charitable remainder trust is allocated among the charitable remainder trust income categories in paragraph (d)(1) of this section without regard to whether any part of that income constitutes unrelated business taxable income under section 512.

(2) *Examples.* The application of the rules in this paragraph (c) may be illustrated by the following examples:

Example 1. For 2007, a charitable remainder annuity trust with a taxable year beginning on January 1, 2007, has \$60,000 of ordinary income, including \$10,000 of gross income from a partnership that constitutes unrelated business taxable income to the trust. The trust has no deductions that are directly connected with that income. For that same year, the trust has administration expenses (deductible in computing taxable income) of \$16,000, resulting in net ordinary income of \$44,000. The amount of unrelated business taxable income is computed by taking gross income from an unrelated trade or business and deducting expenses directly connected with carrying on the trade or business, both computed with modifications under section 512(b). Section 512(b)(12) provides a specific deduction of \$1,000 in computing the amount of unrelated business taxable income. Under the facts presented in this example, there are no other modifications under section 512(b). The trust, therefore, has unrelated business taxable income of \$9,000 (\$10,000 minus the \$1,000 deduction under section 512(b)(12)). Undistributed ordinary income from prior years is \$12,000 and undistributed capital gains from prior years are \$50,000. Under the terms of the trust agreement, the trust is required to pay an annuity of \$100,000 for year 2007 to the noncharitable beneficiary. Because the trust has unrelated business taxable income of \$9,000, the excise tax imposed under section 664(c) is equal to the amount of such unrelated business taxable income, \$9,000. The character of the \$100,000 distribution to the noncharitable beneficiary is as follows: \$56,000 of ordinary income (\$44,000 from current year plus \$12,000 from prior years), and \$44,000 of capital gains. The \$9,000 excise tax is allocated to corpus, and does not reduce the amount in any of the categories of income under paragraph (d)(1) of this section. At the beginning of year 2008, the amount of undistributed capital gains is \$6,000, and there is no undistributed ordinary income.

Example 2. During 2007, a charitable remainder annuity trust with a taxable year beginning on January 1, 2007, sells real estate generating gain of \$40,000. Because the trust had obtained a loan to finance part of the purchase price of the asset, some of the income from the sale is treated as debt-financed income under section 514 and thus constitutes unrelated business taxable income under section 512. The unrelated debt-financed income computed under section 514 is \$30,000. Assuming the trust receives no other income in 2007, the trust

will have unrelated business taxable income under section 512 of \$29,000 (\$30,000 minus the \$1,000 deduction under section 512(b)(12)). Except for section 512(b)(12), no other exceptions or modifications under sections 512–514 apply when calculating unrelated business taxable income based on the facts presented in this example. Because the trust has unrelated business taxable income of \$29,000, the excise tax imposed under section 664(c) is equal to the amount of such unrelated business taxable income, \$29,000. The \$29,000 excise tax is allocated to corpus, and does not reduce the amount in any of the categories of income under paragraph (d)(1) of this section. Regardless of how the trust's income might be treated under sections 511–514, the entire \$40,000 is capital gain for purposes of section 664 and is allocated accordingly to and within the second of the categories of income under paragraph (d)(1) of this section.

(3) *Effective/Applicability date.* Paragraph (c) is effective for taxable years beginning after December 31, 2006. The rules that apply with respect to taxable years beginning before January 1, 2007, are contained in 1.664–1(c) in effect prior to the date these regulations are published as final regulations in the **Federal Register**. (See 26 CFR part 1, § 1.664–1(c)(1) revised as of April 2, 2007).

(d) * * *

(2) * * * All taxes imposed by chapter 42 of the Code (including without limitation taxes treated under section 664(c)(2) as imposed by chapter 42) and, for taxable years beginning prior to January 1, 2007, all taxes imposed by subtitle A of the Code for which the trust is liable because it has unrelated business taxable income, shall be allocated to corpus. * * *

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Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E8–4576 Filed 3–6–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY**Coast Guard****33 CFR Part 117**

[Docket No. USCG–2008–0010]

RIN 1625–AA09

Drawbridge Operation Regulations; Mill Neck Creek, Oyster Bay, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the drawbridge operating