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Eickhoff complaint

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To: russell.j.edelstein@usdoj.gov, justin.m.fontaine@usdoj.gov

I will be writing in my newsletter about the complaint in Eickhoff, linking back to a previous issue back in July 2020, in which we discussed AM 2020-006

https://www.plannedgiftdesign.com/uploads/2/4/6/6/24661337/volume_three_number_seven.pdf

but wanted to give you a heads up that I will be taking issue with the statement, repeated ten times in the text of the complaint, that a charitable remainder annuity trust is required to file a 1041. This is simply not true.

Possibly what you mean to say is that a nonqualified trust would have to file a 1041. But a nonqualified trust would also not be subject to the four tier regime of section 664(b), and it seems likely realized gains would be taxed to the trust rather than carried out on K-1s.

Don't get me wrong, the Eickhoffs are idiots, they should be enjoined from doing anything similar in the future, disgorge their profits, etc., and the lawyers and accountants who played along with them should be disciplined, etc.

But you do not want to go on record with flat misstatements. A qualified CRT files only a 5227, not also a 1041.

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