



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

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Uniform Issue List:

507.00-00; 2055.00-00; 642.00-00; 4941.00-00;
4942.00-00; 4943.00-00; 4944.00-00; 4945.00-00

Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

Legend:

Foundation =

Decedent =

Date1 =

Date2 =

Date3 =

Date4 =

Date5 =

Dear :

This is our response to your request, dated December 29, 2009, as amended on April 15, 2011, for a ruling under §§ 2055(a), 2055(e)(2), 642(c), 507 and 4941, 4942, 4943, 4944, and 4945 of the Internal Revenue Code (Code) with respect to the judicial construction of the terms of your testamentary charitable lead annuity trust agreement.

Facts:

You are an irrevocable, testamentary charitable lead annuity trust (Trust) that is a split interest trust described in § 4947(a)(2). You were established by Decedent through a living trust that would take effect on the date of Decedent's death. Decedent died testate on Date1. Upon the death of Decedent, a fractional share of the property of the living trust became distributable to your trustees to hold and administer. Decedent also exercised by will, a limited power to appoint the assets of the deceased spouse's non-exempt marital trust to you. Your sole charitable lead beneficiary is Foundation, an organization that is exempt under § 501(c)(3) and classified as a private foundation under § 509(a). Your remainder beneficiaries are trusts for the descendants of Decedent. Decedent's son and daughter are two of your three trustees, two of the three estate trustees and two of the Foundation's three trustees.

According to the provisions of the trust agreement, the annuity payments under the trust are to be paid to the charitable recipient or its successor in interest, for ten (10) years. Upon termination of the trust, the trust corpus will be distributed per stirpes to trusts for the benefit of Decedent's descendants. If there are no remaining descendants, the trust corpus will be distributed to Foundation or a similar organization, if it is a charity of a type described in

§ 2055(a).

Article Eight allocates certain property to you with the intent that you:

...qualify as a charitable lead so that the value of the interest passing to charity is deductible as a charitable lead interest under §§2055(e)(2)(B) and 2522(e)(2)(B) of the Code and so that the payments of the amount to charity will be deductible from the gross income of the trust to the extent provided by § 642(c).

Section 8.05 of Article Eight sets forth the formula for determining the annual annuity amount:

Accounting from the beginning date, the annual annuity amount shall be an amount that will produce a present value under § 7520 of the Code for the non-charitable remainder interest equal to zero or as close to zero as possible without exceeding zero.

Under Article 8.13, the trustee is prohibited from exercising any power or discretion granted by state law that would be inconsistent with your qualification as a charitable lead trust under § 2055(e)(2).

Article 8.15 provides that no amount may be paid to or for the use of any person other than a qualified organization during the term of trust.

Decedent's United States Estate (and Generation-Skipping Transfer) Tax Return, Form 706, was timely filed. On Schedule O of Form 706, Decedent's estate claimed a charitable deduction under § 2055(a) for the present value of the property passing to you. The estate received a closing letter from the Internal Revenue Service (Service) accepting the estate tax return as filed on Date2.

Article Four of Decedent's will gives the fiduciaries full powers to hold, retain, invest, reinvest, sell, and manage real or personal property. In order to conclude the administration of the estate, your trustees state that they must determine, with certainty, the annual annuity amount to be paid.

On Date3, your trustees, with the consent of Foundation and the remainder beneficiaries, and with notice to the state attorney general's office, filed a complaint with the state probate court requesting in part, that the court construe the formula for determining the annuity amount to permit variable ascending annuity payments, commencing on Decedent's date of death and continuing for the 10-year annuity term, with annuity payments made to ascend each year by 120 percent of the prior year's payment over the annuity term, rather than a straight-line annuity payment over the 10-year term. Your complaint explained that construing the formula as a straight-line annuity would make it unlikely that the trustees could make the annuity payments over the entire term. Therefore, the trustees would be unable to satisfy Decedent's intentions regarding the gift of the lead annuity interest to the charitable beneficiary. You provided schedules showing a comparison to the straight-line method that demonstrated that a variable ascending annuity payment method would result in a higher total payout to Foundation.

On Date4, the state probate court, upon finding your material allegations to be true and the relief you requested to be in the best interests of your beneficiaries and in a manner that conforms the terms of your trust to Decedent's intent and achieves Decedent's tax objectives, issued an order construing that both straight line and variable ascending annuity payment formulas are actuarial equivalents of one another (based on the § 7520 rate applicable at the settlor's death) and either form of payment is permitted under section 8.05 of article eight of the trust agreement.

On Date5, the state probate court, agreed to your request to issue a supplemental order construing the trust agreement, upon finding your material allegations to be true and the relief you requested to be in the best interests of your beneficiaries and in a manner that conforms the original yet ambiguous terms of your trust to Decedent's intent and achieves Decedent's tax objectives, issued a final modified order construing that variable ascending annuity payments (based on the § 7520 rate applicable at the settlor's death) is permitted under section 8.05 of article eight of the trust agreement. The court order is subject to the condition that the trustees request and receive a favorable private letter ruling from the Service.

Rulings Requested:

You requested the following rulings:

1. The terms of the charitable lead trust, as construed by the state court's order to permit variable ascending annuity payments, commencing on the decedent's death and continuing for the 10-year annuity term, will satisfy the requirements of § 2055(e)(2) and, therefore, property of the taxable estate of the decedent passing to the charitable lead trust will qualify for a charitable deduction under § 2055(a).
2. The charitable lead trust will be allowed a deduction under § 642(c) for each taxable year in an amount equal to the annuity amount paid from the charitable lead trust's gross income during such taxable year in accordance with the charitable lead trust's terms, as construed by the state court's order to permit variable ascending annuity payments, commencing on the decedent's death and continuing for the 10-year annuity term, except that no charitable deduction will be allowed for any amounts allocable to the trust's unrelated business income for the taxable year.
3. The construction of the terms of the charitable lead trust by the state court's order, allowing ascending annuity payments over the 10-year annuity term, will not constitute a termination under § 507 of the Code of the charitable lead trust's private foundation status.
4. The construction of the terms of the charitable lead trust by the state court's order, allowing ascending annuity payments over the 10-year annuity term, will not be self-dealing under § 4941.
5. The construction of the terms of the charitable lead trust by the state court's order, allowing ascending annuity payments over a 10-year annuity term, will not subject the

charitable lead trust to tax on the undistributed income of a private foundation under § 4942.

6. The construction of the terms of the charitable lead trust by the state court's order, allowing ascending annuity payments over a 10-year annuity term, will not subject the charitable lead trust to tax on excess business holdings under § 4943.
7. The construction of the terms of the charitable lead trust by the state court's order, allowing ascending annuity payments over the 10-year annuity term, will not be an investment which jeopardizes charitable purposes subject to tax under § 4944.
8. The construction of the terms of the charitable lead trust by the state court's order, allowing ascending annuity payments over a 10-year annuity term, will not be a taxable expenditure under § 4945.
9. To the extent that the construction of the terms of the charitable lead trust by the state court's order, allowing ascending annuity payments over the 10-year annuity term, is a transaction with respect to the charitable lead trust's interest or expectancy in property held by the estate, the living trust or the non-exempt marital trust, such transaction will not be self-dealing under § 4941.

Law:

Section 507(a)(2)(A) states that the status of any organization as a private foundation shall be terminated if, with respect to such organization, there have been willful repeated acts (or failures to act), or a willful and flagrant act (or failure to act) giving rise to liability for tax under chapter 42, and (B) the Secretary notifies such organization that, by reason of subparagraph (A), such organization is liable for the tax imposed by subsection (c), and either such organization pays the tax imposed by subsection (c) (or any portion not abated under subsection (g)) or the entire amount of such tax is abated under subsection (g).

Section 642(c)(1) provides, in part, that in the case of an estate or trust, there shall be allowed as a deduction in computing its taxable income (in lieu of the deduction allowed by § 170(a)), any amount of the gross income, without limitation, which pursuant to the terms of the governing instrument is, during the taxable year, paid for a purpose specified in § 170(c).

Section 2001(a) imposes a tax on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

Section 2055(a) provides that for purposes of the tax imposed by § 2001, the values of the taxable estate shall be determined by deducting from the value of the gross estate the amount of all bequests, legacies, devises, or transfers to or for the use of charitable, religious scientific, literary, or educational organizations described in §§ 2055(a)(1) through (a)(4).

Section 2055(e)(2) provides that where an interest in property (other than an interest described in § 170(f)(3)(B)) passes or has passed from the decedent to a person, or for a use, described

in § 2055(a), and an interest (other than an interest which is extinguished upon the decedent's death) in the same property passes or has passed (for less than an adequate and full consideration in money or money's worth) from the decedent to a person, or for a use not described in § 2055(a), no deduction shall be allowed under § 2055 for the interest that passes or has passed to the person, or for a use, described in § 2055(a), unless –

- (A) in the case of a remainder interest, such interest is in a trust which is a charitable remainder annuity trust or a charitable remainder unitrust (described in § 664) or a pooled income fund (described in § 642(c)(5)), or
- (B) in the case of any other interest, such interest is in the form of a guaranteed annuity, or is a fixed percentage distributed yearly of the fair market value of the property (to be determined yearly).

Section 4941(a)(1) imposes a tax on each act of self-dealing between a disqualified person and a private foundation to be paid by the self-dealer who participates in the act of self-dealing.

Section 4941(d)(1) states that, for purposes of this section the term "self-dealing" means any direct or indirect –

- A. Sale or exchange, or leasing, of property between a private foundation and a disqualified person;
- B. Lending of money or other extension of credit between a private foundation and a disqualified person;
- C. Furnishing of goods, services, or facilities between a private foundation and a disqualified person;
- D. Payment of compensation (or payment or reimbursement of expenses) by a private foundation to a disqualified person;
- E. Transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a private foundation; and
- F. Agreement by a private foundation to make any payment of money or other property to a government official (as defined in § 4946(c)), other than an agreement to employ such individual for any period after the termination of his government service if such individual is terminating his government service within a 90-day period.

Section 4942 imposes a tax on the undistributed income of a private foundation for any taxable year.

Section 4943(a)(1) imposes a tax on the excess business holdings of any private foundation in a business enterprise during any taxable year which ends during the taxable period a tax equal to 10 percent of the value of such holdings.

Section 4944 imposes an excise tax against the private foundation and its management for investing any amount in such a manner as to jeopardize the carrying out of any of its exempt purposes.

Section 4945(a) imposes excise taxes on each taxable expenditure made by a private foundation.

Section 4945(d) states that the term "taxable expenditure" means any amount paid or incurred by a private foundation for the purposes described in §§ 4945(d)(1) through 4945(d)(5).

Section 4947(a)(2) provides generally that a non-exempt split-interest trust will be subject to §§ 507, 508(e), 4941, 4943, 4944, and 4945 if a charitable income, estate, or gift tax deduction was allowed for any portion of the trust and if any of the unexpired interests in the trust are devoted to noncharitable purposes.

Section 4947(b)(3)(A) states, in pertinent part, that §§ 4943 and 4944 shall not apply to a trust which is described in subsection (a)(2) if:

- (i) all the income interest (and none of the remainder interest) of such trust is devoted solely to one or more of the purposes described in § 170(c)(2)(B), and
- (ii) all amounts in such trust for which a deduction was allowed under § 170, 545(b)(2), 642(c), 2055, 2106(a)(2) or 2522 have an aggregate value not more than 60 percent of the aggregate fair market value of all amounts in such trust.

Section 1.642(c)-1(a)(1) of the Income Tax Regulations (regulations) provides that any part of the gross income of a trust which, pursuant to the governing instrument, is paid during a taxable year for a charitable purpose shall be allowed as a deduction to the trust.

Section 20.2055-2(a) of the Estate Tax Regulations (estate tax regulations) states that if a trust is created or property is transferred for both a charitable and a private purpose, a deduction may be taken of the value of the charitable beneficial interest only insofar as that interest is presently ascertainable and hence severable from the noncharitable interest as of the date of death.

Section 20.2055-2(e)(1) provides that where an interest in property passes or has passed from the decedent for charitable purposes and an interest in the same property passes or has passed from the decedent for private purposes (for less than an adequate and full consideration in money or money's worth) no deduction is allowed under § 2055 of the Code for the value of the interest which passes or has passed for charitable purposes unless the interest in property is a deductible interest described in § 20.2055-2(e)(2).

Section 20.2055-2(e)(2)(vi)(a) provides, in part, that a deductible interest includes a charitable interest in the form of a guaranteed annuity interest. The term "guaranteed annuity interest" means the right pursuant to the instrument of transfer to receive a guaranteed annuity. A guaranteed annuity is an arrangement under which a determinable amount is paid periodically, but not less often than annually, for a specified term of years or for the life or lives of certain individuals, each of whom must be living at the date of death of the decedent and can be

ascertained at such date. Only one or more of the following individuals may be used as measuring lives: the decedent's spouse, and an individual who, with respect to all remainder beneficiaries (other than charitable organizations described in § 170, 2055, or 2522), is either a lineal ancestor or the spouse of a lineal ancestor of those beneficiaries. An amount is determinable if the exact amount which must be paid under the conditions specified in the instrument of transfer can be ascertained as of the appropriate valuation date. For example, the amount to be paid may be a stated sum for a term of years, or for the life of the decedent's spouse, at the expiration of which it may be changed by a specified amount, but it may not be redetermined by reference to a fluctuating index such as the cost of living index.

Section 20.2055-2(e)(2)(vi)(b) provides that a charitable interest is a guaranteed annuity interest only if it is a guaranteed annuity interest in every respect.

Section 20.2055-2(e)(2)(vi)(d) provides that where a guaranteed annuity interest is in trust, the governing instrument of the trust may provide that income of the trust in excess of the amount required to pay the guaranteed annuity interest shall be paid to or for the use of a charity. Nevertheless, the amount of the deduction under § 2055 of the Code is limited to the fair market value of the guaranteed annuity interest.

Section 53.4943-10(a)(1) of the Foundation and Similar Excise Taxes Regulations (foundation regulations) states that, except for certain activities that are program-related or produce passive income, under § 4943(d)(4) of the Code the term "business enterprise" includes the active conduct of a trade or business, including any activity which is regularly carried on for the production of income from the sale of goods or the performance of services and which constitutes an unrelated trade or business under § 513.

Section 53.4944-1(a)(1) states generally, that if a private foundation (as defined in § 509) invests any amount in such a manner as to jeopardize the carrying out of any of its exempt purposes, § 4944(a)(1) imposes an excise tax on the making of such investment. The tax imposed by § 4944(a)(1) and this paragraph shall apply to investments of either income or principal.

Section 53.4946-1(a)(8) states that, for purposes of § 4941 only, the term "disqualified person" shall not include any organization which is described in § 501(c)(3), other than an organization described in § 509(a)(4).

Section 53.4947-1(e)(1) states generally that the provisions of § 507(a) shall not apply to a trust described in § 4947(a)(1) or (2) by reason of any payment to a beneficiary that is directed by the terms of the governing instrument of the trust and is not discretionary with the trustee, or in the case of a discretionary payment, by reason of, or following, the expiration of the last remaining charitable interest in the trust.

Section 53.4947-2(b)(1) provides the general rule that §§ 4943 and 4944 do not apply to a split-interest trust described in § 4947(a)(2) if:

- (i) All the income interest (and none of the remainder interest) of the trust is devoted solely to one or more of the purposes described in § 170(c)(2)(B) and all amounts in the trust for which a deduction was allowed under § 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522 have an aggregate value (at the time for which the deduction was allowed) of not more than 60 percent of the aggregate fair market value of all amounts in the trust (after the payment of estate taxes and all other liabilities), or
- (ii) A deduction was allowed under § 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2) or 2522 for amounts payable under the terms of the trust to every remainder beneficiary, but not to any income beneficiary.

Section 53.4947-2(b)(2) states that, for purposes of § 4947(b)(3)(A), the term 'income interest' shall include an interest in property transferred in trust which is in the form of a guaranteed annuity interest.

Analysis:

Issue 1: Section 2055(e)(2) of the Code

On the date of Decedent's death, the living trust constituted a guaranteed lead annuity trust under § 2055(e)(2). Thus, on the date of Decedent's death, Decedent's estate was entitled to a charitable deduction under § 2055(a) for the present value of the charitable interest under the trust. The state court's construction, an event that occurred after the date of Decedent's death, does not affect the charitable qualification of the trust or the estate's eligibility for a charitable deduction for that interest. Accordingly, based on the information submitted and the representations made, we conclude, on the date of Decedent's death, the trust satisfied the requirements under § 2055(e)(2). Therefore, pursuant to § 2055(a), Decedent's estate is entitled to the charitable deduction claimed on Decedent's original Form 706 for the present value of the charitable interest established under the trust on the date of Decedent's death.

Issue 2: Section 642(c) of the Code

Section 642(c)(1) provides, in part, that in the case of an estate or trust, there shall be allowed as a deduction in computing its taxable income (in lieu of the deduction allowed by § 170(a)), any amount of the gross income, without limitation, which pursuant to the terms of the governing instrument is, during the taxable year, paid for a purpose specified in § 170(c).

Section 1.642(c)-1(a)(1) provides that any part of the gross income of a trust which, pursuant to the governing instrument, is paid during a taxable year for a charitable purpose shall be allowed as a deduction to the trust.

In Lyeth v. Hoey, 305 U.S. 188 (1938), the Supreme Court held that property received in the settlement of a bona fide will contest is treated for federal income tax purposes as passing to the beneficiaries by inheritance.

In Middleton v. United States, 99 F.Supp. 801 (D.C. Pa. 1951), the court held, applying principles derived from Lyeth, that amounts distributed to a charity pursuant to an agreement comprising a will contest were made "pursuant to the terms of the will." The court concluded that the income from the property that was distributed to the charity was permanently set aside for a charitable purpose and allowed a deduction for these amounts for the years prior to the year that the parties entered into the settlement agreement.

In Emanuelson v. United States, 159 F. Supp. 34 (D.C. Conn. 1958), decedent left two conflicting wills – one which left 2/3 of the residue of decedent's estate to certain charities, and another which left the entire residue to non-charitable legatees. After decedent's death, a controversy arose among the beneficiaries of the two wills. The controversy was resolved in a written compromise agreement between the two sets of beneficiaries, under which 52/480 of the residue passed to the charities named in one of the wills. Payments made to the charities under the written compromise agreement were held to be made pursuant to the will.

In Estate of Wright v. United States, 677 F.2d 53 (9th Cir. 1982), cert. denied, 459 U.S. 909 (1982), although the testator's will directed that the entire residue go to charitable causes, as a result of a will contest by the testator's sister, which was eventually settled, only a portion of the residue was actually distributed to charitable trusts. The district court held that income from the estate could not be said to be "permanently set aside" as required under § 642, during the period of the will contest when the resolution resulted in a partial distribution to noncharitable beneficiaries. In granting summary judgment in favor of the government's disallowance of the deduction, the court held that tax benefits could only be recognized for those funds that were actually received by the charitable concerns.

Rev. Rul. 59-15, 1959-1 C.B. 164, citing Emanuelson, held that a settlement agreement arising from a will contest qualifies as a governing instrument.

We conclude that the construction of Trust's formula for determining the Annuity Amount to permit variable ascending annuity payments resolves a genuine ambiguity in Trust and therefore the court order issued Date5 will be treated as the settlement of a bona fide contest. Payments of gross income made under that construction will be considered pursuant to the terms of the governing instrument within the meaning of § 642(c)(1).

Issue 3: Section 507 of the Code, Termination of Private Foundation Status

Generally, the provisions of § 507(a) do not apply to a trust described in § 4947(a)(1) or (2) by reason of any payment to a beneficiary that is directed by the terms of the governing instrument of the trust and is not discretionary with the trustee, or in the case of a discretionary payment, by reason of, or following, the expiration of the last remaining charitable interest in the trust. See § 53.4947-1(e)(1). Your trust agreement sets forth the terms for payment to the charitable lead and remainder beneficiaries. The judicial construction of your trust agreement to construe the ambiguous formula for determining the annual annuity payable to your charitable lead beneficiary is not discretionary with the trustees and conforms the terms of the trust agreement to the Decedent's charitable intent. The judicial construction of the trust terms simply

established the rights of the parties, and this and the following rulings are based upon this conclusion. Such construction will not cause a termination of your private foundation status under § 507.

Issue 4: Section 4941 of the Code, Self-Dealing

Section 4941 imposes an excise tax on each act of self-dealing between a disqualified person and a private foundation. Section 53.4946-1(a)(8) provides that, for purposes of § 4941, the term "disqualified person" does not include any organization described in § 501(c)(3) (other than an organization described in § 509(a)(4)). Thus, the Foundation is not a disqualified person with respect to you. While you are treated as a private foundation for certain purposes, you also are or may become a disqualified person with respect to Foundation, for instance as a substantial contributor. However, the judicial construction of the ambiguous terms of the trust agreement to permit variable ascending annuity payments to the Foundation is not an act of self-dealing because it is not described in §§ 4941(d)(1)(A) through (F). There is no improper use or transfer of Foundation assets or other impermissible transaction between you and Foundation. Foundation will be receiving a payment of the annuity amount as directed by the terms of the governing instrument.

Issue 5: Section 4942, Failure to Distribute Income

Section 4947(a)(2) provides that a "split-interest trust" is treated as a private foundation for purposes of several Code sections, including 4941 and 4945. However, § 4942 is not applicable to you.

Issue 6: Section 4943, Excess Business Holdings

Section 4943 imposes on the excess business holdings of any private foundation in a business enterprise during any taxable year, which ends during the taxable period a tax equal to 10 percent of the value of such holdings. The term "business enterprise" includes the conduct of a trade or business, including any activity which is regularly carried on for the production of income from the sale of goods or the performance of services and which constitutes an unrelated trade or business under § 513. See § 53.4943-10(a)(1). The judicial construction of the terms of your trust agreement to allow variable ascending annuity payments would not trigger an excise tax on excess business holdings because it is not an acquisition (within the meaning of the foundation regulations) that would change the amount of your holdings in any business enterprise.

Issue 7: Section 4944, Jeopardizing Investments

Section 4944 imposes an excise tax on a private foundation that invests any amount in such a manner as to jeopardize the carrying out of any of its exempt purposes equal to 10 percent of the amount so invested for each year in the taxable period. The tax imposed by § 4944(a)(1) applies to investments of either income or principal. See § 53.4944-1(a)(1). The judicial construction of the terms of your trust agreement to allow variable ascending annuity payments would not trigger the excise tax for investing amounts in such a manner as to jeopardize the

carrying out of your exempt purposes because it does not constitute an investment of your income or principal.

Issue 8: Section 4945, Taxable Expenditures

Section 4945(a) imposes excise taxes on each taxable expenditure made by a private foundation. The term "taxable expenditure" means any amount paid or incurred by a private foundation for the purposes described in §§ 4945(d)(1) through 4945(d)(5), including any amount paid or incurred by a private foundation for a purpose other than one specified in § 170(c)(2)(B). The judicial construction of the terms of your trust agreement to allow variable ascending annuity payments is not a taxable expenditure described in § 4945(d) because it is made for a purpose specified in § 170(c)(2)(B) within the meaning of § 4945 in fulfillment of the charitable lead annuity requirement.

Issue 9: Charitable Lead Trust's Interest or Expectancy in Property, Section 4941

As discussed above, the judicial construction of the ambiguous terms of your trust agreement to permit variable ascending annuity payments to the Foundation is not an act of self-dealing because it is not described in §§ 4941(d)(1)(A) through (F). There is no impermissible transaction with respect to Foundation's interest or expectancy in property held by the estate. Since there is no self-dealing transaction, the estate administration exception in § 53.4941(d)-1(b)(3) does not apply to these facts.

Conclusion:

Accordingly, based on the foregoing, we rule as follows:

1. The terms of the charitable lead trust, as construed by the state court's order to permit variable ascending annuity payments, commencing on the decedent's death and continuing for the 10-year annuity term, will satisfy the requirements of § 2055(e)(2) for a guaranteed annuity interest (i.e., an arrangement under which a determinable amount is paid periodically, but not less often than annually, for a specified term of years) and, therefore, property of the taxable estate of the decedent passing to the charitable lead trust will qualify for a charitable deduction under § 2055(a).
2. The charitable lead trust will be allowed a deduction under § 642(c) for each taxable year in an amount equal to the annuity amount paid from the charitable lead trust's gross income during such taxable year in accordance with the charitable lead trust's terms, as construed by the state court's order to permit variable ascending annuity payments, commencing on Decedent's death and continuing for the 10-year annuity term, except that no charitable deduction will be allowed for any amounts allocable to the trust's unrelated business income for the taxable year.
3. The construction of the terms of the charitable lead trust by the state court's order, allowing ascending annuity payments over the 10-year annuity term, will not constitute a termination under § 507 of the charitable lead trust's private foundation status.

4. The construction of the terms of the charitable lead trust by the state court's order, allowing ascending annuity payments over the 10-year annuity term, will not be self-dealing under § 4941.
5. The construction of the terms of the charitable lead trust by the state court's order, allowing ascending annuity payments over a 10-year annuity term, will not subject the charitable lead trust to tax on the undistributed income of a private foundation under § 4942.
6. The construction of the terms of the charitable lead trust by the state court's order, allowing ascending annuity payments over a 10-year annuity term, will not subject the charitable lead trust to tax on excess business holdings under § 4943.
7. The construction of the terms of the charitable lead trust by the state court's order, allowing ascending annuity payments over the 10-year annuity term, will not be an investment, which jeopardizes charitable purposes subject to tax under § 4944.
8. The construction of the terms of the charitable lead trust by the state court's order, allowing ascending annuity payments over a 10-year annuity term, will not be a taxable expenditure under § 4945.
9. To the extent that the construction of the terms of the charitable lead trust by the state court's order, allowing ascending annuity payments over the 10-year annuity term, is a transaction with respect to the charitable lead trust's interest or expectancy in property held by the estate, the living trust or the non-exempt marital trust, such transaction will not be self-dealing under § 4941.

This ruling will be made available for public inspection under section 6110 of the Code after certain deletions of identifying information are made. For details, see enclosed Notice 437, *Notice of Intention to Disclose*. A copy of this ruling with deletions that we intend to make available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

This ruling is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

This ruling is based on the facts as they were presented and on the understanding that there will be no material changes in these facts. This ruling does not address the applicability of any section of the Code or regulations to the facts submitted other than with respect to the sections described. Because it could help resolve questions concerning your federal income tax status, this ruling should be kept in your permanent records.

If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

In accordance with the Power of Attorney currently on file with the Internal Revenue Service, we are sending a copy of this letter to your authorized representative.

Sincerely,

Ronald Shoemaker
Manager, Exempt Organizations
Technical Group 2

Enclosure
Notice 437