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Person To Contact:
, ID No.

Telephone Number:

Re:

Refer Reply To:
CC:PSI:04
PLR-123984-04
Date: NOVEMBER 30, 2004

Legend:

- Husband =
- Wife =
- A =
- B =
- C =
- D =
- Trust =

- Foundation =
- State =
- X% =
- Y =

Dear :

This is in response to your authorized representative's submission dated April 26, 2004, and subsequent correspondence, in which rulings were requested concerning the establishment and operation of a proposed charitable lead trust.

According to the facts submitted and representations made, Husband and Wife propose to create Trust, an irrevocable trust, for the benefit of Husband's and Wife's children, A, B, and C, as well as certain charitable organizations. The initial trustees of Trust will be A, B, C, and D.

Article First, Paragraph (X) of Trust prohibits the trustees from engaging in any act of self-dealing as defined in § 4941(d), from causing Trust to have excess business holdings as defined in § 4343(c), from causing an investment to be acquired or retained in a manner that subjects Trust to tax under § 4944, and from making any taxable expenditures as defined in § 4945(d).

Article Second, Paragraph (A)(1) provides that until the expiration of a period of y years from the date of execution of the trust indenture (the "Termination Date"), the trustees shall distribute annually (in cash or in kind, valued at the date of distribution, or partly in each, in the trustees' sole discretion) to such one or more Qualified Charities as may be selected by the trustees an annuity amount equal to x% of the value of all assets contributed to the trust on the date of execution. Said annuity amount shall commence on and accrue from the date of execution of the trust indenture and may, in the trustees' discretion, be paid in convenient installments not less frequently than annually. In the event the trust indenture is executed on such a day that the first fiscal year of the trust shall not be a full year, said amount distributable for the first year (or last year) shall be determined as a pro rata portion of the annuity amount, taking into account the number of days remaining in said first year (or last year) using the date of execution of the trust indenture as the first of such days remaining (or the Termination Date as the last day remaining). The income distributed to the organizations described in §§ 170(c) and 2522(a) shall consist of the same proportion of each class of the items of income of the trust as the total of each class bears to the total of all classes. Any income not so distributed may be added currently to principal in the sole discretion of the trustees.

Article Second, Paragraph (A)(2) provides that if, on or before fifteen days prior to the close of any year, the trustees have not selected the Qualified Charity or Charities to receive all or any portion of the annuity amount for that year, then such undesignated portion shall be paid to Foundation, if Foundation is at that time a Qualified Charity.

Article Second, Paragraph (A)(3) provides that the term "Qualified Charities" shall mean and include only such organizations as are described (at the time of determination) in §§ 170(c) and 2522(a), gifts to which qualify for the charitable deduction under both the federal gift tax and federal income tax laws.

Article Second, Paragraph (A)(4) provides that the annuity interest provided in Article Second shall not be commuted or prepaid prior to the Termination Date.

Article Second, Paragraph (B) provides that on the Termination Date, the trustees shall distribute the remaining Trust assets in equal shares so as to provide one share for each of A, B, and C, his heirs, personal representatives, and administrators.

Under Article Third, Paragraph (A), any trustee of Trust may resign without need to obtain an order from any court by written instrument delivered to a co-trustee or successor trustee, and thereupon he or she will stand discharged from further performance on any duties as trustee.

Article Fifth provides that Trust shall be irrevocable. Each grantor expressly acknowledges that he or she will have no right or power, whether alone or in conjunction with others, or in whatever capacity, to alter, amend, revoke or terminate Trust or any terms thereof, in whole or in part, or to designate the persons who shall

possess or enjoy the trust property or the income therefrom during the continuance of the trust.

Article Sixth provides that Trust is executed under the laws of State, and its validity and construction, and the rights of all parties in interest, shall be determined under State law.

The following rulings are requested.

1. Trust will be allowed a deduction under § 642(c) each taxable year in an amount equal to the annuity amount paid from Trust's gross income during such taxable year in accordance with Trust's terms.
2. No portion of Trust's income will be taxable to Husband and Wife under §§ 671 through 678.
3. The annuity interest in Trust will be a guaranteed annuity interest within the meaning of § 2522(c)(2)(B) and § 25.2522(c)-3(2)(vi) of the Gift Tax Regulations and that a gift tax deduction will be allowed to Husband and Wife pursuant to § 2522 equal to the value of the guaranteed annuity.

Income Tax Rulings

Section 642(c)(1) provides, in part, that in the case of a trust, there shall be allowed as a deduction in computing its taxable income any amount of 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). If a charitable contribution is paid after the close of such taxable year and on or before the last day of the year following the close of such taxable year, then the trustee may elect to treat such contribution as paid during such taxable year.

Section 681(a) provides, in part, that in computing the deduction allowed under § 642(c) to a trust, no amount otherwise allowable under § 642(c) as a deduction shall be allowed as a deduction with respect to income of the taxable year which is allocable to its unrelated business income for such year. Further, the term "unrelated business income" refers to an amount equal to the amount which, if such trust were exempt from tax under § 501(c)(3), would be computed as its unrelated business taxable income under § 512 (relating to income derived from certain business activities and from certain property acquired with borrowed funds).

Section 671 provides the general rule that, in cases in which the grantor or another person is regarded as the owner of any portion of a trust, there shall be included in computing his taxable income and credits those items of income, deductions, and credits against tax on the trust that are attributable to that portion of the

trust to the extent that such items would be taken into account in computing the taxable income and credits against the tax of an individual.

Section 673 through 678 of subpart, E, part 1, subchapter J, specify the circumstances under which the grantor or another person is regarded as the owner of a portion of a trust.

Based solely on the facts as presented in this ruling request, we conclude that, except to the extent that Trust has unrelated business income within the meaning of § 681(a), and subject to the limitations set forth in § 642(c)(4), Trust will be allowed a deduction in accordance with § 642(c)(1) for the amount of gross income paid out to charitable beneficiaries described in § 170(c) during its taxable year or by the close of the following year. Because the deduction under § 642(c)(1) is limited to amounts of gross income paid for purposes specified in § 170(c), no deduction will be allowed under § 642(c) for a distribution from the trust principal, whether made in property or money, except to the extent that such property or money has been included in Trust's gross income and provided no deduction was allowed for any previous taxable year for the amount so paid. Trust will be subject to the rules of § 644 to the extent such rule would be applicable.

Further, based upon the facts submitted, Husband and Wife will not be treated as the owners of Trust under § 673, 674, 676, 677, or 678. Therefore, no portion of Trust's income will be taxable to Husband or Wife under these provisions.

Trust does not authorize any power that would cause administrative control of Trust to be considered exercisable primarily for the benefit of Husband and/or Wife under § 675. However, whether Husband and/or Wife will be treated as the owners of Trust under § 675 will depend upon the circumstances attendant upon the operation of the trust. This is a question of fact, the determination of which must necessarily be deferred until the federal income tax returns of the parties involved have been identified by the Office of the Area Director in which returns are filed.

Gift Tax Ruling

Section 2501(a)(1) provides that a tax, computed as provided in § 2502, is hereby imposed for each calendar year on the transfer of property by gift during such calendar year by any individual, resident or nonresident.

Section 2511(a) provides that subject to the limitations contained in chapter 12, the gift tax imposed by § 2501 will apply whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible.

Section 2512(a) provides that, if a gift is made in property, the value thereof at the date of the gift shall be considered the amount of the gift. Section 2512(b) provides

that where property is transferred for less than adequate and full consideration in money or money's worth, the amount by which the value of the property exceeded the value of the consideration shall be deemed a gift.

Section 2522(a)(2) provides that in computing taxable gifts for the calendar year, there shall be allowed as a deduction in the case of a citizen or resident the amount of all gifts made during such year to or for the use of a corporation, or trust, or community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes..., no part of the net earnings of which inures to the benefit of any private shareholder or individual, which is not disqualified for tax exemption under § 501(c)(3) by reason of attempting to influence legislation, and which does not participate in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

Section 2522(c)(2) provides that where a donor transfers an interest in property (other than an interest described in § 170(f)(3)(B)) to a person, or for a use, described in § 2522(a) or (b) and an interest in the same property is retained by the donor, or is transferred or has been transferred (for less than an adequate and full consideration in money or money's worth) from the donor to a person, or for a use, not described in § 2522(a) or (b), no deduction shall be allowed under § 2522 for the interest which has been transferred to the person, or for the use described in § 2522(a) or (b), unless – (B) in the case of an interest that is not a remainder interest, such interest is in the form of a guaranteed annuity or a fixed percentage distributed yearly of the fair market value of the property (to be determined yearly).

Section 25.2522(c)-3(c)(2)(vi)(a) provides that a charitable interest is a guaranteed annuity interest, whether or not such interest is in trust. For purposes of this paragraph (c)(2)(vi), the term "guaranteed annuity interest" means an irrevocable 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 the gift and can be ascertained at such date. 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 date of gift.

Section 25.2522(c)-3(c)(2)(vi)(e) provides that where a charitable interest in the form of a guaranteed annuity interest is in trust and the present value on the date of the gift of all income interests for a charitable purpose exceeds 60 percent of the aggregate fair market value of all amounts in the trust (after payment of liabilities), the charitable interest will not be a guaranteed annuity interest unless the governing instrument prohibits both the acquisition and retention of assets which could give rise to a tax under § 4944 if the trust acquired such assets.

In the present case, based on the information submitted and representations made, the annuity payable under the terms of Trust satisfies the requirements of § 25.2522(c)-3(c)(2)(vi)(a). Therefore, the annuity will be a guaranteed annuity for purposes of § 2522(c)(2)(B) and the corresponding regulations. Accordingly, Husband and Wife will each be entitled to a gift tax charitable deduction under § 2522 equal to one half of the present value of the guaranteed annuity interest, valued as of the date property is transferred to Trust.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by the appropriate party. While this office has not verified any part of the material submitted in support of the request for rulings, it is subject to verification and examination.

Except as specifically ruled above, no opinion is expressed as to the federal tax consequences of the facts described above under the cited provisions or any other provisions of the Code or regulations. Specifically, we express no opinion regarding the value of the property contributed to Trust.

This ruling is directed only to the taxpayers requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

George Masnik
Chief, Branch 4
(Office of Passthroughs and Special Industries)

Enclosure
Copy for section 6110 purposes

cc: