

**Internal Revenue Service**

Department of the Treasury  
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Person To Contact: \_\_\_\_\_, ID No.

Telephone Number:

Refer Reply To:  
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Date:  
March 4, 2013

Legend:

- Taxpayer =
- Spouse =
- Trust =
- Foundation =
- Son 1 =
- Son 2 =
- Son 3 =
- Committee =
- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
- X =
- Y =

Dear \_\_\_\_\_ :

This responds to your letter dated July 25, 2012, and subsequent correspondence, in which you request rulings under §§ 2522, 2033, 2035, 2036 and 2038 of the Internal Revenue Code.

The facts submitted and the representations made are as follows. On Date 1, Taxpayer created a charitable lead annuity trust (Trust). Son 1 is the sole trustee of Trust. The beneficiary of the income interest in Trust is a private foundation (Foundation) within the meaning of § 509(a). Foundation was established by Taxpayer and Spouse on Date 2. Foundation’s directors are Taxpayer, Spouse, Son 1 and Son 2 (Board of Directors).

Section III(a) of Trust provides that Trust will pay for X years (Annuity Period) a guaranteed annuity amount equal to \$Y (Annuity Amount). If Foundation ceases to exist or is not described in each of §§ 170(b)(1)(A), 170(c), 2055(a), and 2522(a) during the Annuity Period, the trustee shall distribute the Annuity Amount to one or more organizations having a similar purpose that are in existence and described in each of §§ 170(b)(1)(A), 170(c), 2055(a), and 2522(a), and in equal or unequal shares among them, as the trustee may choose. Trust further provides that Taxpayer shall never exercise the power of the trustee described in the immediately preceding sentence. The trustee shall pay Foundation the Annuity Amount each year for the X-year term on the last day of Trust's taxable year. Notwithstanding any existing or later enacted state law, except on termination of the Annuity Period, no amount may be paid from Trust to or for the use of any person other than an organization describe in each of §§ 170(b)(1)(A), 170(c), 2055(a) and 2522(a).

Section III(f) provides that no portion of the Annuity Amount may be prepaid or commuted by the trustee. Section III(i) provides that the trustee is prohibited from engaging in any act of self-dealing as defined in § 4941(d). Except to the extent provided in § 4947(b)(3), the trustee shall not retain any excess business holdings as defined in § 4943(c) which would subject Trust to tax under § 4943. The trustee is further restricted from making any investments which would subject Trust to tax under § 4944 and from making any taxable expenditures as defined in § 4945(d). If § 4942 is at any time applicable to Trust, the trustee is to make such distributions at such time and in such manner as not to subject Trust to tax under § 4942.

Section III(l) provides that upon the expiration of the Annuity Period, the trustee, after making all distributions required by Section III(a), shall deliver and distribute the remaining trust property in equal shares to the trustees of trusts established for Sons 1, 2, and 3.

Section III(p) provides that on or immediately prior to any valuation of trust assets, the trustee shall report to the valuation trustee the identity of all assets of Trust that do not have a readily ascertainable fair market value. The valuation trustee shall then have any of those assets valued as of the appropriate valuation date and report the value to the trustee. The valuation shall be made independent of the trustee and of any related or subordinate party or disqualified person with respect to Trust. In all events, the valuation trustee and any successor must be an independent trustee. An independent trustee is any party other than a related or subordinate party with respect to Trust within the meaning of § 672(c) or a disqualified person with respect to Trust within the meaning of § 4946 (other than a party who is a disqualified person with respect to Trust solely by reason of service as the trustee of Trust).

Section IV(g) of Trust provides, in relevant part, that if the trustee fails or ceases to serve as the trustee for any reason then Son 1 has the power to appoint any individual(s) (including without limitation himself, but specifically excluding Taxpayer and

Spouse), any corporate trustee or both to serve as sole trustee or co-trustees. If Son 1 cannot exercise this power, Son 2 acquires this power. If Son 2 cannot exercise this power, Son 3 acquires this power. Section IV(r) provides that neither Taxpayer nor Spouse shall ever serve as a trustee or hold or exercise any powers of the trustee.

On Date 3, the Board of Directors of Foundation amended Foundation's bylaws, as follows. Article III, Section 3.2 provides that if at any time Foundation is a beneficiary of a charitable lead trust, a charitable remainder trust or other similar trust, and the charitable trust was established by a director or officer of, or substantial contributor to, Foundation, the director, officer or substantial contributor establishing the charitable trust shall be prohibited from acting on or involvement in matters concerning the receipt, investment, grant or distribution of, or any other decisions involving funds received by Foundation from such charitable trust. In addition, any funds received from a charitable trust shall be segregated into a separately established and dedicated account and separately accounted for on the books and records of Foundation in a manner that clearly allows the tracing of the funds into and out of such separate account.

Article III, Section 3.9 provides that a director who establishes a charitable trust for the benefit of Foundation may not be counted when establishing a quorum to vote on matters relating to the receipt, investment, grant or distribution of, or any other decisions involving funds received by Foundation.

Article VI, Section 5.1 provides that no committee established by the Board of Directors, including a standing committee established under Section 5.5 of the bylaws, shall include as a member a director or officer of, or a substantial contributor to, Foundation who has established a charitable trust of which Foundation is a beneficiary.

On Date 4, a quorum of the Board of Directors, excepting Taxpayer, established a standing committee (Committee) under Section 5.5. of the bylaws, with the sole authority to receive, separately invest and make all investment decisions and administrative, grant and distribution decisions on behalf of Foundation with respect to and regarding all funds received by Foundation from Trust. The bylaws provide that Committee consists of at least three members, at least one of whom is not a director of Foundation and at least one of whom is not related or subordinate to any director of Foundation as defined by § 672(c). All actions by Committee shall require unanimous consent.

Taxpayer requests the following rulings: (1) the funding of Trust will be a completed gift for Federal gift tax purposes; (2) Taxpayer is entitled to a gift tax deduction under § 2522 based on the present value of the annuity, determined in accordance with § 25.2512-5 of the Gift Tax Regulations; and (3) on Taxpayer's death, no portion of the principal of Trust will be included in Taxpayer's gross estate under § 2033, 2035, 2036, or 2038.

Rulings 1 and 2:

Section 2501 provides that a tax is imposed each calendar year on the transfer of property by gift during the calendar year by any individual.

Section 2511 provides that the gift tax shall 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 25.2511-2(b) provides that as to any property, or part thereof, of which the donor has so parted with dominion and control as to leave in him no power to change its disposition, whether for his own benefit or for the benefit of another, the gift is complete.

Section 25.2511-2(c) provides that a gift is incomplete if and to the extent that a reserved power gives the donor the power to name new beneficiaries or to change the interests of the beneficiaries as between themselves unless the power is a fiduciary power limited by a fixed or ascertainable standard.

Section 25.2511-2(e) provides that a donor is considered as himself having a power if it is exercisable by him in conjunction with any person not having a substantial adverse interest in the disposition of the transferred property or the income therefrom. A trustee, as such, is not a person having an adverse interest in the disposition of the trust property or its income.

Section 2522(a) provides that in computing taxable gifts for the calendar year, there shall be allowed as a deduction the amount of all gifts made during the year to or for the use of the charitable purposes described therein.

Section 2522(c)(2)(B) provides that where a donor transfers an interest in property to a person, or for a use, described in subsection (a) 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 subsection (a), no deduction shall be allowed for the interest which is, or has been transferred to the person, or for the use, described in subsection (a) unless, in the case of any interest other than a remainder interest, the 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 25.2522(c)-3(c)(2)(vi)(a) provides, in part, that the charitable interest is a guaranteed annuity interest, whether or not such interest is in trust. 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)(b) provides that a charitable interest is a guaranteed annuity interest only if it is a guaranteed annuity interest in every respect.

Under § 25.2522(c)-3(d)(2)(iv), the present value of a guaranteed annuity interest in trust is to be determined under § 25.2512-5.

In this case, for purposes of § 25.2511-2(b), Taxpayer has not retained a power over the property transferred to Trust, and he has not retained an interest, reversion, or right to alter, amend, or revoke Trust. Taxpayer may not serve as a trustee of Trust. Although he is one of the directors of Foundation, he is not permitted to vote on matters relating to disbursements or grants of funds received from Trust. Any funds received by Foundation from Trust will be segregated into a separate account. Committee will administer and distribute the separate account. Taxpayer will have no power over the account or Committee. The annuity payable under Trust satisfies the requirements of § 25.2522(c)-3(c)(2)(vi)(a), and is a guaranteed annuity for purposes of § 2522(c).

Accordingly, based upon the facts submitted and the representations made, we conclude that Taxpayer's transfer to Trust is a completed gift for Federal gift tax purposes. We further conclude that Taxpayer is entitled to a gift tax deduction under § 2522 based on the present value of the guaranteed annuity payable to Foundation determined in accordance with § 25.2512-5.

### Ruling 3:

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

Section 2033 provides that the value of the gross estate shall include the value of all property to the extent of the interest therein of the decedent at the time of death.

Section 2035(a) provides that if the decedent transferred an interest in property or relinquished a power with respect to any property, during the three-year period ending on the date of the decedent's death, and the value of the property (or interest therein) would have been included in the gross estate under § 2036, 2037, 2038 or 2042 if the interest or power had been retained by the decedent on the date of death, then the value of the gross estate shall include the value of any property (or interest therein) which would have been so included.

Section 2036(a) provides that the value of the gross estate includes the value of all property to the extent of any interest therein of which the decedent has made a

transfer (except in the case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, under which the decedent has retained for life or for any period not ascertainable without reference to his death or for any period which does not in fact end before this death, the possession or enjoyment of, or the right to the income from, the property, or the right either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income from the property.

Section 2038(a)(1) provides that the value of the gross estate includes the value of all property to the extent of any interest therein of which the decedent has made a transfer (except in the case of a bona fide sale for adequate and full consideration in money or money's worth), by trust or otherwise, where the enjoyment thereof was subject at the date of death to any change through the exercise of a power (in whatever capacity exercisable) by the decedent alone or by the decedent in conjunction with any other person, to alter, amend, revoke or terminate the interest in the property or where the decedent relinquished such power within the three-year period ending on the date of the decedent's death.

In this case, Taxpayer created Trust under which a fixed amount is distributed annually to a qualified charitable organization for a term of years. At the end of the term of years, the remaining trust property will be distributed to existing trusts established for the benefit of Sons 1, 2, and 3. Further, Taxpayer cannot serve as a trustee of Trust and he cannot participate in any vote of Foundation's Board of Directors or officers concerning the annuity funds received from Trust. Thus, Taxpayer retains no interest or reversion in Trust and no right to alter, amend or revoke Trust.

Accordingly, based on the facts submitted and the representations made, we conclude that no portion of Trust's property will be included in Taxpayer's gross estate under § 2033, 2035, 2036, or 2038.

Except as ruled above, we express or imply no opinion concerning the federal tax consequences of this transaction under the cited provisions of the Code or any other provision of the Code.

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

Sincerely,

Leslie H. Finlow

Leslie H. Finlow  
Senior Technician Reviewer, Branch 4  
Office of Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures: Copy for § 6110 purposes