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Telephone Number: \_\_\_\_\_

Refer Reply To:  
CC:PSI:B04  
PLR-113144-18  
Date: October 10, 2018

Re:

Legend

- Settlor =
- Trust =
- Independent Trustee =
- Administrative Trustee =
- State =
- Individual A =
- Individual B =
- Foundation =
- Distribution Committee =
- Date =
- Eligible Beneficiaries =

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

This letter responds to your authorized representative's letter of March 22, 2018, requesting rulings under §§ 2501, 2522, 2041, 671, 642, and 4947 of the Internal Revenue Code.

The facts submitted and representations made are as follows.

On Date, Settlor created Trust, an irrevocable trust, for the benefit of Individual A, Individual B, and Foundation (Eligible Beneficiaries). Trust has an Independent Trustee and an Administrative Trustee. The situs of Trust is State.

Article I(1) of Trust provides that during the life of Settlor, the trustees shall pay so much, if any, of the net income from such trust to or for the benefit of any one or more of the Eligible Beneficiaries, in such equal or unequal shares and to the exclusion of any one or more of the other Eligible Beneficiaries, as the Distribution Committee shall, at any time or from time to time by written instrument delivered to the trustees, direct; provided, however, that the trustees shall not distribute any amount to any of the Eligible Beneficiaries pursuant to any direction of the Distribution Committee unless and until Settlor shall, acting individually and solely in a nonfiduciary capacity, first consent in writing to such direction (Settlor's Consent Power).

Article I(2) provides that the trustees shall be authorized to distribute all or any part of the net income not so paid pursuant to Article I(1) to any one or more of the Eligible Beneficiaries, in such equal or unequal shares and to the exclusion of any one or more of the other Eligible Beneficiaries, as the Independent Trustee shall, at any time or from time to time in the absolute discretion of the Independent Trustee, determine for any purpose.

Article I(3) provides that the trustees shall pay so much, if any, of the principal of such trust to or for the benefit of any one or more charitable organizations, and in such equal or unequal shares, as Settlor shall, at any time or from time to time by written instrument, direct and appoint; provided, however, that this power of appointment shall be a limited power, which shall not be exercisable to any extent in favor of Settlor, Settlor's estate, the creditors of Settlor, or the creditors of Settlor's estate (Settlor's Inter Vivos Limited Power of Appointment).

Any net income not so paid pursuant to Article I shall be accumulated and added to principal.

Article II provides that following Settlor's death, the trustees shall distribute the trust estate to one or more charitable organizations, and in such equal or unequal shares, as Settlor shall direct and appoint; provided, however, that this power of appointment shall be a limited power, which shall not be exercisable to any extent in favor of Settlor, Settlor's estate, creditors of Settlor, or creditors of Settlor's estate (Settlor's Testamentary Limited Power of Appointment). To the extent Trust property is not effectively appointed, the trustees shall distribute such whole or part to such one or more charitable organizations, and in such equal or unequal shares, as the Independent Trustee shall determine in the absolute discretion of the Independent Trustee.

Article III(A) provides that during the life of Settlor, the Distribution Committee shall have the power to direct the trustees as provided in Article I. Following Settlor's death, the

Distribution Committee shall cease to exist and the person or persons who shall, immediately prior to the death of Settlor, be in office as members of the Distribution Committee shall cease to have any authority, either individually or collectively, to direct the trustees or to exercise any other right or power under Trust.

Under Article III(B), the initial members of the Distribution Committee are Independent Trustee, Individual A and Individual B. Article III(C) provides that Settlor, or if Settlor at any time is not able to act, the members of the Distribution Committee may appoint successor members to the committee. The Independent Trust also has the power under Article III(D) to appoint members to the committee.

Article III(F) provides that (i) there shall be at least one member of the Distribution Committee in office at all times during Settlor's life and (ii) a majority of the members of the committee shall, at all times during Settlor's life, consist of Eligible Beneficiaries.

Article III(G) provides that if and so long as there shall be more than one member on the Distribution Committee, the committee shall act by majority vote of such members.

Article V(G) provides that there shall not be more than three individuals, or more than two individuals and one corporation in office as trustees of Trust, and none of Settlor, Settlor's husband, and any individual or corporation who is related or subordinate to Settlor or Settlor's husband (within the meaning of § 672(c)) is eligible to serve as trustee of Trust.

Article XII(B)(6) defines the term "charitable organization" to mean and include only an organization (a) that is described in §§ 170(c), 2055(a), and 2522(a); and (b) that shall not, by any action or course of conduct, have so disqualified itself that any charitable deduction that would otherwise be available for federal income, estate or gift tax purposes, in respect of property passing to such organization, would be disallowed.

Settlor has made the following representations. Settlor has not claimed nor will she claim an income tax or gift tax charitable deduction under § 170(c) or 2522(a) for any property transferred by Settlor to Trust at any time, unless and until Trust makes a payment to one or more charitable organizations. No person (including any corporation or trust) other than Settlor is presently expected to make any transfer of property to Trust at any time, so no other charitable deduction will be claimed or available for contributions of property to Trust. Trust will not set aside any amounts for charitable purposes and claim a deduction under § 642(c)(2).

You have requested the following rulings:

1. The contribution of property by Settlor to Trust will not be a completed gift subject to federal gift tax.

2. Any distribution of income to any one of the Eligible Beneficiaries pursuant to Settlor's Consent Power will not be a completed gift, subject to federal gift tax, by any member of the Distribution Committee.
3. If Settlor exercises Settlor's Inter Vivos Limited Power of Appointment and appoints all or any part of the principal of Trust to one or more charitable organizations, as defined in Trust, any such distribution pursuant to the appointment will be a completed gift subject to federal gift tax by Settlor and, in such event, a gift tax charitable deduction would be allowed to Settlor under § 2522 for the amount of such gift.
4. The members of the Distribution Committee do not possess a general power of appointment within the meaning of § 2041 and, accordingly, no portion of Trust will be includible in the gross estate of any member of the Distribution Committee for federal estate tax purposes.
5. For as long as the Distribution Committee is serving, neither Settlor nor any member of the Distribution Committee shall be treated as the owner of any portion of Trust under §§ 671 through 678 and, accordingly, no portion of the items of income, gain, deductions and credits of Trust will be included under § 671 in computing the taxable income of Settlor or of any member of the Distribution Committee.
6. Except to the extent that Trust has "unrelated business income" within the meaning of § 681(a), Trust will be allowed a charitable deduction in any taxable year in accordance with § 642(c)(1) against any gross income, including capital gains and ordinary income, otherwise taxable to Trust for the full amount paid during such taxable year (or by the close of the following taxable year, if the trustees shall so elect) to charitable organizations pursuant to Settlor's exercise of Settlor's Inter Vivos Limited Power of Appointment.
7. Settlor will not be a disqualified person with respect to Trust, because Trust will not be treated as a split-interest trust within the meaning of § 4947(a)(2) and Treas. Reg. § 53.4947-1(c)(1)(i) and, accordingly, the provisions of §§ 507, 508(e), 4941, 4943, 4944, and 4945 shall not apply to Trust during Settlor's life.

#### RULING #1

Section 2501(a)(1) provides that a tax is 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 the gift tax applies 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) of the Gift Tax Regulations provides that a gift is complete as to any property, or part thereof or interest therein, of which the donor has so parted with dominion and control as to leave in the donor no power to change its disposition, whether for his own benefit or for the benefit of another. But if upon a transfer of property (whether in trust or otherwise) the donor reserves any power over its disposition, the gift may be wholly incomplete, or may be partially complete and partially incomplete, depending upon all the facts in the particular case. Accordingly, in every case of a transfer of property subject to a reserved power, the terms of the power must be examined and its scope determined.

Section 25.2511-2(b) provides an example, where the donor transfers property to another in trust to pay the income to the donor or accumulate it in the discretion of the trustee, and the donor retains a testamentary power to appoint the remainder amount to the donor's descendants. The regulation concludes that no portion of the transfer is a completed gift. However, if the donor had not retained a testamentary power of appointment, but instead provided that the remainder should go to X or his heirs, the entire transfer would be a completed gift.

Section 25.2511-2(c) provides that a gift is incomplete in every instance in which a donor reserves the power to revest the beneficial title in himself or herself. A gift is also 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.

Under § 25.2511-2(e), a donor is considered as himself having a power if it is exercisable by the donor 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 25.2511-2(f) provides that the relinquishment or termination of a power to change the beneficiaries of transferred property, occurring otherwise than by death of the donor, is regarded as the event which completes the gift and causes the gift tax to apply.

Section 25.2511-2(e) does not define "substantial adverse interest." Section 25.2514-3(b)(2) provides, in part, that a taker in default of appointment under a power has an interest that is adverse to an exercise of the power. Section 25.2514-3(b)(2) also provides that a co-holder of a power is considered as having an adverse interest where he may possess the power after the possessor's death and may exercise it at that time in favor of himself, his estate, his creditors, or the creditors of his estate.

In *Estate of Sanford v. Commissioner*, 308 U.S. 39 (1939), the taxpayer created a trust for the benefit of named beneficiaries and reserved the power to revoke the trust in whole or in part, and to designate new beneficiaries other than himself. Six years later, in 1919, the taxpayer relinquished the power to revoke the trust, but retained the right to change the beneficiaries. In 1924, the taxpayer relinquished the right to change the beneficiaries. The Court stated that the taxpayer's gift is not complete, for purposes of the gift tax, when the donor has reserved the power to determine those others who would ultimately receive the property. Accordingly, the Court held that the taxpayer's gift was complete in 1924, when he relinquished his right to change the beneficiaries of the trust. A taxpayer's retention of a power to change the beneficial interests in a trust causes the transfer to the trust to be incomplete for gift tax purposes, even though the taxpayer may be defeated by the actions of third parties. *Goldstein v. Commissioner*, 37 T.C. 897 (1962); see also *Estate of Goelet v. Commissioner*, 51 T.C. 352 (1968).

In this case, Settlor retained Settlor's Consent Power over the income of Trust. Under § 25.2511-2(e), 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. Pursuant to Trust, upon Settlor's death, the Distribution Committee ceases to exist. Further, the trustees will distribute the property in Trust to charitable organizations, either pursuant to Settlor's Testamentary Limited Power of Appointment or, in default, pursuant to Article II of Trust. Accordingly, Trust will terminate on Settlor's death and, as a result, the Distribution Committee members will no longer possess any powers over the property transferred to Trust by Settlor. Under § 25.2514-3(b)(2), a co-holder of a power is only considered as having an adverse interest where he may possess the power after the possessor's death and may exercise it at that time in favor of himself, his estate, his creditors, or the creditors of his estate. Accordingly, upon Settlor's death, the Distribution Committee members would not be takers in default and do not have adverse interests to Settlor under § 25.2514-3(b)(2) and for purposes of § 25.2511-2(e). They are merely co-holders of the power at the time of Settlor's death. Therefore, Settlor is considered as herself possessing the power to distribute income to any beneficiary because she retained the Settlor's Consent Power. In addition, one member of the Distribution Committee is the Independent Trustee. Under § 25.2511-2(e), a trustee is not a person having an adverse interest in the disposition of the trust property or its income. Therefore, the retention of Settlor's Consent Power causes the income interest to be an incomplete gift for gift tax purposes.

If Settlor does not exercise Settlor's Consent Power, the Independent Trustee has the discretion to distribute income to any one or more of the eligible beneficiaries. However, the Independent Trustee's power is not a condition precedent to Settlor's Consent Power. Settlor's Consent Power over income is presently exercisable and not subject to a condition precedent. Thus, the Independent Trustee's power to distribute net income does not cause the transfer of property to Trust to be complete with respect to the income interest for federal gift tax purposes. Therefore, Settlor is considered as

possessing the power to distribute income to one or more Eligible Beneficiaries because Settlor retained Settlor's Consent Power. However, if Settlor does not exercise Settlor's Consent Power and the Independent Trustee exercises his power to distribute income to one or more Eligible Beneficiaries, Settlor will be treated as making a gift at the time of the distribution by the Independent Trustee to the Eligible Beneficiary.

Settlor retained an Inter Vivos Limited Power of Appointment and a Testamentary Limited Power of Appointment to appoint Trust property to one or more charitable organizations as defined in Trust. Under § 25.2511-2(b), the retention of a testamentary power to appoint the remainder of a trust is considered a retention of dominion and control over the remainder. Likewise, an inter vivos power of appointment to appoint the remainder of a trust is a retention of dominion and control over the remainder. Accordingly, the retention of these powers causes the transfer of property to Trust to be incomplete with respect to the remainder for federal tax purposes.

Based upon the facts submitted and representations made, we conclude that the contribution of property to Trust by Settlor is not a completed gift subject to federal gift tax.

## RULING #2

Section 2514(b) provides that the exercise or release of a general power of appointment created after October 21, 1942, shall be deemed a transfer of property by the individuals possessing such power.

Section 2514(c) provides that the term "general power of appointment" means a power which is exercisable in favor of the individual possessing the power (possessor), the possessor's estate, the possessor's creditors, or the creditors of the possessor's estate.

Section 25.2514-1(c)(1) provides that a power of appointment is not a general power of appointment if by its terms it is exercisable only in favor of one or more designated persons or classes other than the possessor or his creditors, or the possessor's estate or the creditors of the possessor's estate or expressly not exercisable in favor of the possessor or his creditors, or the possessor's estate or the creditors of his estate.

Section 2514(c)(3)(A) provides that, in the case of a power of appointment created after October 21, 1942, if the power is exercisable by the possessor only in conjunction with the creator of the power, such power is not deemed a general power of appointment.

Section 20.2041-1(b)(2) of the Estate Tax Regulations provides that for purposes of §§ 20.2041-1 to 20.2041-3, the term "power of appointment" does not include powers reserved by the decedent to himself within the concept of §§ 2036 to 2038. (See §§ 20.2036-1 to 20.2038-1.) No provision of § 2041 or of §§ 20.2041-1 to 20.2041-3 is to be construed as in any way limiting the application of any other section of the Code or of these regulations. The power of the owner of a property interest already possessed

by him to dispose of his interest, and nothing more, is not a power of appointment, and the interest is includible in his gross estate to the extent it would be includible under § 2033 or some other provision of part III of subchapter A of chapter 11.

In this case, the powers held by the Distribution Committee members under Settlor's Consent Power are powers that are exercisable only in conjunction with the creator, Settlor. Accordingly, under § 2514(b) and (c), the Distribution Committee members do not possess general powers of appointment by virtue of possessing this power.

Based upon the facts submitted and representations made, we conclude that any distribution of income by the Distribution Committee from Trust to any beneficiary of Trust will not be a completed gift subject to federal gift tax, by any member of the Distribution Committee. Instead, any distribution of income by the Distribution Committee from Trust will be a completed gift by Settlor. Further, in the event the Settlor does not exercise Settlor's Consent Power and the Independent Trustee exercises his power to distribute income to one or more Eligible Beneficiaries, the distribution of income by the Independent Trustee from Trust to one or more Eligible Beneficiaries will be a completed gift by Settlor. Further, upon Settlor's death, the fair market value of Trust property remaining in Trust that has not been distributed or otherwise appointed pursuant to Settlor's Inter Vivos Limited Power of Appointment is includible in Settlor's gross estate for federal estate tax purposes. See § 20.2041-1(b)(2) and 20.2036-1.

### RULING #3

Section 2522(a)(2) provides that, in computing taxable gifts for the calendar year, there shall be allowed as a deduction 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 education purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 25.2514-1(b)(2) provides that for purposes of §§ 25.2514-1 through 25.2514-3, the term "power of appointment" does not include powers reserved by a donor to himself. No provision of § 2514 or of §§ 25.2514-1 through 25.2514-3 is to be construed as in any way limiting the application of any other section of the Code or of these regulations. The power of the owner of a property interest already possessed by him to dispose of his interest, and nothing more, is not a power of appointment, and the interest is includible in the amounts of his gifts to the extent it would be includible under § 2511 or other provisions of the Code.

In this case, pursuant to Trust, Settlor may exercise her Inter Vivos Limited Power of Appointment to appoint principal of Trust to one or more charitable organizations. Charitable organizations are defined to include only an organization (a) that is described



in §§ 170(c), 2055(a), and 2522(a); and (b) that shall not, by any action or course of conduct, have so disqualified itself that any charitable deduction that would otherwise be available for federal income, estate or gift tax purposes, in respect of property passing to such organization, would be disallowed. If Settlor exercises this power, any distribution to a charitable organization will be a completed gift by Settlor. See §§ 25.2514-1(b)(2) and 25.2511-2(f). Assuming such appointment is made to a charitable organization as defined in Trust, a gift tax charitable deduction is allowable under § 2522 for the amount of the gift.

#### RULING #4

Section 2041(a)(2) provides that the value of the gross estate shall include the value of all property to the extent of any property with respect to which the decedent has at the time of death a general power of appointment created after October 21, 1942, or with respect to which the decedent has at any time exercised or released such a power by a disposition which is of such nature that if it were a transfer of property owned by the decedent, such property would be includible in the decedent's gross estate under §§ 2035 to 2038, inclusive.

Under § 2041(b)(1), the term "general power of appointment" is defined, in relevant part, to mean a power which is exercisable in favor of the decedent, his estate, his creditors or the creditors of his estate.

Section 2041(b)(1)(C)(i) provides, however, that in the case of a power of appointment created after October 21, 1942, if the power is not exercisable by the decedent except in conjunction with the creator of the power, such power is not deemed a general power of appointment.

In this case, the powers held by the Distribution Committee members under the Settlor's Consent Power are powers that are exercisable only in conjunction with the creator, Settlor. Accordingly, under § 2041(a)(2) and (b)(1)(C)(i), the Distribution Committee members do not possess general powers of appointment by virtue of possessing these powers.

Based upon the facts submitted and representations made, the Distribution Committee members do not possess general powers of appointment for purposes of the federal estate tax and, therefore, possession of these powers will not cause Trust property to be includible in any Distribution Committee member's gross estate under § 2041(a)(2).

#### RULING #5

Section 671 provides that where it is specified in subpart E of part I of subchapter J that the grantor or another person shall be treated as the owner of any portion of a trust, there shall then be included in computing the taxable income and credits of the grantor

or the other person those items of income, deductions, and credits against tax of the trust which are attributable to that portion of the trust to the extent that such items would be taken into account under chapter 1 in computing taxable income or credits against the tax of an individual.

Section 672(a) provides, for purposes of subpart E, the term “adverse party” means any person having a substantial beneficial interest in the trust which would be adversely affected by the exercise or nonexercise of the power which he possesses respecting the trust.

Sections 673 through 677 specify the circumstances under which the grantor is treated as the owner of a portion of a trust.

Section 673(a) provides that the grantor shall be treated as the owner of any portion of a trust in which the grantor has a reversionary interest in either the corpus or the income therefrom, if, as of the inception of that portion of the trust, the value of such interest exceeds five (5) percent of the value of such portion.

Section 674(a) provides, in general, that the grantor shall be treated as the owner of any portion of a trust in respect of which the beneficial enjoyment of the corpus or the income therefrom is subject to a power of disposition, exercisable by the grantor or a nonadverse party, or both, without the approval or consent of any adverse party.

Section 674(b) provides that § 674(a) shall not apply to the powers described in § 674(b) regardless of by whom held.

Section 674(b)(3) provides that § 674(a) shall not apply to a power exercisable only by will, other than a power in the grantor to appoint by will the income of the trust where the income is accumulated for such disposition by the grantor or may be so accumulated in the discretion of the grantor or a nonadverse party, or both, without the approval or consent of any adverse party.

Section 674(b)(4) provides that § 674(a) shall not apply to a power to determine the beneficial enjoyment of the corpus or the income therefrom if the corpus or income is irrevocably payable for a purposes specified in § 170(c) (relating to the definition of charitable contributions).

Section 674(c) provides that § 674(a) shall not apply to a power exercisable (without the approval or consent of any other person) by a trustee or trustees, none of whom is the grantor, and no more than half of whom are related or subordinate parties who are subservient to the wishes of the grantor (1) to distribute, apportion, or accumulate income to or for a beneficiary or beneficiaries, or to, for, or within a class of beneficiaries, or (2) to pay out corpus to or for a beneficiary or beneficiaries or to a class of beneficiaries (whether or not income beneficiaries).

Under § 675 and applicable regulations, the grantor is treated as the owner of any portion of a trust if, under the terms of the trust agreement or circumstances attendant on its operation, administrative control is exercisable primarily for the benefit of the grantor rather than the beneficiary of the trust.

Section 676(a) provides that the grantor shall be treated as the owner of any portion of a trust, whether or not he is treated as such owner under any other provision of part I, subchapter J, chapter 1, where at any time the power to revest in the grantor title to such portion is exercisable by the grantor or a nonadverse party, or both.

Section 677(a) provides, in general, that the grantor shall be treated as the owner of any portion of a trust, whether or not he is treated as such owner under § 674, whose income without the approval or consent of any adverse party is, or, in the discretion of the grantor or a nonadverse party, or both, may be (1) distributed to the grantor or the grantor's spouse; (2) held or accumulated for future distributions to the grantor or the grantor's spouse; or (3) applied to the payment of premiums on policies of insurance on the life of the grantor or the grantor's spouse.

Section 678(a) provides that a person other than the grantor shall be treated as the owner of any portion of a trust with respect to which: (1) such person has a power exercisable solely by himself to vest the corpus or the income therefrom in himself, or (2) such person has previously partially released or otherwise modified such a power and after the release or modification retains such control as would, within the principles of §§ 671 through 677, inclusive, subject a grantor of a trust to treatment as the owner thereof.

Based on the facts submitted and representations made, we conclude an examination of Trust reveals none of the circumstances that would cause Settlor to be treated as the owner of any portion of Trust under § 673, 674, 676, or 677 as long as the Distribution Committee remains in existence and serving. Because none of the members of the Distribution Committee have a power exercisable by himself to vest trust income or corpus in himself, none shall be treated as the owner of Trust under § 678(a).

We further conclude that an examination of Trust reveals none of the circumstances that would cause administrative controls to be considered exercisable primarily for the benefit of Settlor under § 675. Thus, the circumstances attendant on the operation of Trust will determine whether Settlor will be treated as the owner of any portion of Trust under § 675. This is a question of fact, the determination of which must be deferred until the federal income tax returns of the parties involved have been examined by the office with responsibility for such examination.

**RULING #6**

Section 642(c)(1) provides that in the case of an estate or trust, there shall be allowed as a deduction in computing its taxable deduction 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), determined without regard to § 170(c)(2)(A).

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

Based on the facts submitted and representations made, except to the extent that Trust has unrelated business income within the meaning of § 681(a), Trust will be allowed a deduction in accordance with § 642(c)(1) for amounts of gross income paid during the taxable year (or by the close of the following taxable year if the trustee so elects) to a charitable organization by trustee pursuant to Article I(1) or Article I(2) of Trust; Settlor's Inter Vivos Limited Power of Appointment in Article I(3) of Trust, and Settlor's Testamentary Limited Power of Appointment in Article II of Trust.

**RULING #7**

Section 4947(a)(2), relating to split-interest trusts, provides that in the case of a trust which is not exempt from tax under § 501(a), not all of the unexpired interests in which are devoted to one or more of the purposes described in § 170(c)(2)(B), and which has amounts in trust for which a deduction was allowed under § 170, 545(b)(2), 642(c), 2055, 2106(a), or 2522, certain private foundation provisions shall apply as if such trust were a private foundation.

Section 53.4947-1(a) of the Foundation and Similar Excise Taxes Regulations provides that § 4947 subjects trusts which are not exempt from taxation under § 501(a), all or part of the unexpired interests in which are devoted to one or more of the purposes described in § 170(c)(2)(B), and which have amounts in trust for which a deduction was allowed under § 170 (or other charitable deduction provisions) to the same requirements and restrictions as are imposed on private foundations. The basic purpose of § 4947 is to prevent these trusts from being used to avoid the requirements and restrictions applicable to private foundations. For purposes of this section, a trust shall be presumed (in the absence of proof to the contrary) to have amounts in trust for which a charitable deduction was allowed if a deduction would have been allowable under one of these sections.

Section 53.4947-1(c)(1)(i) provides that a trust is one which has amounts in trust for which a deduction was allowed under § 642(c) within the meaning of § 4947(a)(2) once a deduction is allowed under § 642(c) to the trust for any amount permanently set aside.

In *Virginian Hotel Corp. v. Helvering*, 319 U.S. 523 (1943), the Supreme Court held that “allowed” meant that the taxpayer had taken the deduction and the Commissioner had not challenged it. *Id.* at 527. Noting that there was “no machinery for formal allowances of deductions from gross income,” a deduction being claimed and going unchallenged is the only way in which a deduction could be “allowed.”

Trust has both charitable and non-charitable beneficiaries and is not exempt from tax under § 501(a). One of the requirements to qualify as a split-interest trust described in § 4947(a)(2) is that the trust has amounts in trust for which a charitable deduction was allowed to some person (including the trust itself for a charitable set-aside). Settlor has represented that, for the duration of Trust, Trust will not hold any amounts for which a person claimed a charitable deduction for a transfer to Trust, or for which Trust claimed a charitable deduction under § 642(c)(2) for a set-aside. Thus, for Settlor’s life, Trust will not qualify as a split-interest trust under § 4947(a)(2). The fact that Settlor may claim a gift tax deduction under § 2522 (or that Trust may claim an income tax deduction under § 642(c)(1) when a charitable distribution from Trust is made is not material, because such amount is not held in Trust when the charitable deduction arises.

Based upon the facts submitted and representations made, we conclude that Settlor will not be a disqualified person with respect to Trust because Trust will not be treated as a split-interest trust within the meaning of §§ 4947(a)(2) and 53.4947-1(c)(1)(i) and, accordingly, the provisions of §§ 507, 508(e), 4941, 4943, 4944, and 4945 shall not apply to Trust during Settlor’s life.

Except as specifically ruled herein, we express no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code 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 (2)