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Department of the Treasury
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Date:
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LEGEND

Charity	=
Corporation	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
Date 6	=
Foundation 1	=
Foundation 2	=
H	=
State	=
State Court	=
State Statutes	=
Trust	=
W	=
X	=
Year 1	=
Year 2	=
Year 3	=

Dear :

This letter responds to a letter from your authorized representatives dated April 3, 2025, and subsequent correspondence, requesting rulings under sections 170, 507, 664, 2522, 4941, 4945, and 6034 of the Internal Revenue Code (Code).[1]

FACTS

The facts and representations submitted are as follows:

H and W, who are spouses, are the settlors and trustees of Trust. H and W are residents of State.

Foundation 1 is a private operating foundation within the meaning of section 4942(j)(3) but not an exempt operating foundation within the meaning of section 4940(d)(2). H is a founder, board member, and a substantial contributor to Foundation 1.

Foundation 2 is a private nonoperating foundation within the meaning of section 509(a) and sections 170(b)(1)(A)(vii) and 170(b)(1)(F)(ii). W is a founder, board member, and substantial contributor to Foundation 2.

H and W established Trust on Date 1 in Year 1 as a charitable remainder unitrust under section 664. Article I, Paragraph A of Trust provides that the trustee shall pay to H and W during their lifetime, and then to the survivor for the survivor's lifetime, annual payments equal to the lesser of a total of 5% of the net fair market value of the Trust assets, valued annually, or the amount of the annual Trust net income as determined under section 643(b). Article I, Paragraph B of Trust provides that the method of determining payment of the unitrust amount shall change as of Date 2, upon which the trustee shall pay to H and W during their lifetime, and then to the survivor for the survivor's lifetime, annual payments equal to a total of 5% of the net fair market value of the trust assets valued annually.

Article II of Trust provides that upon the death of the survivor of H and W, Trust shall terminate, and the trust property shall be distributed, outright, to such one or more charitable organizations as H and W or the survivor of H and W shall have designated by Will, or by an instrument in writing, duly acknowledged and delivered to the trustee specifically referring to and exercising the power of appointment, provided that any organization that is designated is then described in sections 170(b)(1)(A), 170(c), 2055(a), and 2522(a). Any portion of the trust property not effectively appointed by H and W, or the survivor of H and W, shall be distributed, outright, in equal shares, to two identified charitable organizations (public charities described in section 509(a) collectively referred to as the "Default Charitable Remainder Beneficiaries").

[1] Unless otherwise noted, all section references are to the Internal Revenue Code of 1986, as amended.

Article VI of Trust provides that payments from the trust to a beneficiary are not assignable or transferable by the beneficiary, except that this provision shall not preclude the unitrust beneficiary from assigning or making a gift to a charitable beneficiary of the right to receive payment of the unitrust amount for the purpose of effecting a termination of the trust, or for any other purpose, so long as such assignment or gift does not violate any provision of the Internal Revenue Code, corresponding regulations, and revenue rulings applicable to a charitable remainder unitrust.

Trust was funded with shares of Corporation (a publicly traded entity) in Year 1 and Year 2. In each of Years 1 and 2, H and W claimed an income tax charitable deduction for the value of the charitable remainder, determined with reference to section 664(e) and any applicable limitations.

In accordance with Article I, Paragraph B, beginning on Date 2, H and W became entitled to unitrust distributions of a total of 5% of the net fair market value of assets, valued annually.

In Year 3, by written instrument, H and W exercised their retained power under Article II to designate the charitable remainder beneficiaries of Trust. In the instrument, H and W designated as equal remainder beneficiaries Foundation 1 and a public charity, which is one of the two Default Charitable Remainder Beneficiaries. The written instrument further provides, however, that if, at the time of the distribution of the charitable remainder, one or more of the designated charitable organizations fails to accept the distribution or is not an organization described in sections 170(b)(1)(A), 170(c), 2055(a), and 2522(a), the distribution to such organization shall lapse and shall be distributed to the remaining qualified organization and if neither organization is so qualified, the distribution shall be made to one or more qualified charitable organizations chosen by the trustee.

As a consequence of Foundation 1 experiencing budget shortfalls, H and W began to explore ways in which assets could be distributed to the charitable remaindermen. H and W ultimately decided to pursue a “divide and donate” transaction in which Trust would be divided into two separate trusts, with one trust terminating early. H and W would then assign their respective unitrust interests in the terminating trust to Foundation 1, Foundation 2, and to Charity (a section 509(a)(2) public charity).

On Date 3, H and W, as the trustees of Trust, filed a petition in State Court to modify and clarify Trust under the authority of State Statutes. Specifically, the petition sought clarification of Article II that the ability to designate the charitable beneficiaries may be exercised by an inter-vivos acknowledged written instrument, effective immediately upon execution and for purposes of a division and partial termination of Trust, as well as by H and W in their wills. In addition, the petition sought to modify Trust to permit the trustee to divide the trust corpus into one or more sub-trusts. The Default Charitable Remainder Beneficiaries, as well as the State attorney general were given notice of the petition and of the hearing on the petition. None objected to the petition. On Date 4,

State Court granted the petition and ordered the clarification and modification of Trust as petitioned.

In accordance with the terms of Trust, as modified by the order of State Court, H and W, as the trustees of Trust, propose to divide Trust into two separate trusts, Trust A and Trust B. The governing provisions of Trust A and Trust B will be the same as the governing provisions of Trust. The trustees will allocate $X to Trust B, and the balance of Trust will be allocated to Trust A.

H and W represent that at the time Trust is divided, the assets allocated to Trust A and Trust B will be fairly representative of the aggregate adjusted bases of the Trust assets and that the division of the assets between Trust A and Trust B will be on a pro-rata basis with respect to each major class of investments held at the date of the division, and within each class, will be fairly representative of the overall appreciation or depreciation of the assets therein.

In accordance with Article II, as clarified by the order of State Court, H and W, in their individual capacities, executed an acknowledged written instrument on Date 6, whereby they irrevocably designated Foundation 1, Foundation 2, and Charity (collectively, the "Trust B Remainder Beneficiaries") as beneficiaries of specific percentages of the remainder of Trust B. The designation of the Trust B Remainder Beneficiaries is conditioned upon approval of each of the rulings addressed in this private letter ruling. Previously, on Date 5, H and W executed an acknowledged written instrument designating Foundation 1 and seven public charities as remainder beneficiaries of Trust A.

In accordance with Article VI of Trust, as clarified by the order of State Court, H and W propose to assign their respective unitrust interests in Trust B to the Trust B Remainder Beneficiaries, in proportion to the Trust B Remainder Beneficiaries' respective percentage interests in the remainder of Trust B, and, as the trustees of Trust, to effect a termination of Trust B so that all of the Trust B assets will be distributed to the Trust B Remainder Beneficiaries, in proportion to their respective percentage interests in Trust B. H and W, as the trustees of Trust, represent that the distribution from Trust B to the Trust B Remainder Beneficiaries will occur within a reasonable time period, such that Trust B will not be treated as a nonexempt charitable trust under section 4947(a)(1). Trust A will continue to be administered and distributed according to the terms of its governing instrument.

H and W represent that the division of their interests in the Trust property is not being done to avoid the rule against the contribution of a partial interest, *see* section 170(f). H and W represent that, for federal tax reporting purposes, the Trust B assets and the unitrust interest will be valued as required by the Code. H and W represent that the actuarial value of the unitrust interest in the Trust B assets will be computed using the discount rate in effect under section 7520 on the date of termination of Trust B.

H and W represent that they have paid from their own financial resources all legal and other costs and expenses incurred in amending Trust and dividing it into two separate trusts and that no transaction costs will be charged to Trust or the resulting Trusts A and B after the division of Trust.

REQUESTED RULINGS, LAW, AND ANALYSIS

Requested Rulings 1 and 2

Whether a wholly gratuitous division and termination of Trust, to allow distribution of Trust assets to charitable remainder beneficiaries Foundation 1 and Foundation 2, (hereinafter "the Proposed Transaction") would constitute self-dealing within the meaning of section 4941(d)(1) by either H or W with respect to Trust.

Whether the Proposed Transaction would constitute self-dealing within the meaning of section 4941(d)(1) by either H or W with respect to Foundation 1 or Foundation 2.

Law

Section 507(b)(2) provides that in the case of a transfer of assets of any private foundation to another private foundation pursuant to any liquidation or other adjustment, organization, or reorganization, the transferee foundation shall not be treated as a newly created organization.

Section 4941(a) imposes excise taxes on each act of self-dealing between a disqualified person and a private foundation.

Section 4941(d)(1)(A) provides that the term "self-dealing" includes any direct or indirect sale or exchange, or leasing, of property between a private foundation and a disqualified person.

Section 4941(d)(1)(E) provides that the term "self-dealing" includes any direct or indirect transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a private foundation.

Section 4946(a)(1)(A), (B), and (D) provide, in part, that the term "disqualified person" includes a substantial contributor to a private foundation, a foundation manager, and a member of the family (as defined in section 4946(d)) of any substantial contributor to, or foundation manager of, a private foundation.

Section 4946(a)(2) provides that the term "substantial contributor" means a person who is described in section 507(d)(2). Section 507(d)(2)(A) provides, in pertinent part, that the term "substantial contributor" includes the creator of a trust.

Section 4946(b)(1) provides that the term “foundation manager” includes an officer, director, or trustee of a foundation (or an individual having powers or responsibilities similar to those of officers, directors, or trustees of the foundation).

Section 4947(a)(2) provides, in pertinent part, that in the case of a split-interest trust (such as a charitable remainder unitrust), section 4941 shall apply as if such trust were a private foundation, but, under section 4947(a)(2)(A), not with respect to any amounts payable under the terms of such trust to income beneficiaries, unless a deduction was allowed for those amounts under sections 170(f)(2)(B), 2055(e)(2)(B), or 2522(c)(2)(B).

Treas. Reg. § 53.4941(d)-2(f)(2) provides that the fact that a disqualified person receives an incidental or tenuous benefit from the use by a foundation of its income or assets will not, by itself, make such use an act of self-dealing.

Treas. Reg. § 53.4946-1(a)(8) provides that for purposes of section 4941 only, the term “disqualified person” does not include any organization described in section 501(c)(3) (other than an organization described in section 509(a)(4)).

Revenue Ruling 2008-41, 2008-30 IRB 1, examined whether the pro-rata division of a trust that qualified as a charitable remainder trust (CRT) under section 664(d) into two or more separate trusts would constitute self-dealing under section 4941 with respect to the CRT. The two fact patterns covered were division of a CRT into separate trusts for each of the CRT’s current income beneficiaries (Situation 1), and division of a CRT into two separate trusts, one for each member of a divorcing couple (Situation 2). In both situations, the recipients may have been disqualified persons with respect to the CRT. The Service concluded that in both situations, no self-dealing transaction occurred by reason of the division of the CRT because (1) none of the disqualified persons received any additional interest in the assets of the CRT due to the division; (2) the remainder interest of the CRT remained preserved exclusively for charitable interests, and there was no increase in the annuity or unitrust amount at the expense of the charitable interest; (3) division of the CRT assets among the separate trusts was not a sale or exchange, and therefore not a sale or exchange between a private foundation and a disqualified person; and (4) the recipients paid all legal and other expenses and costs incident to the division of the CRT.

Ruling 1 Analysis

Trust is a charitable remainder unitrust and is therefore a split-interest trust under section 4947(a)(2). Section 4941 applies to a split-interest trust as if such trust were a private foundation, but not with respect to any amount payable under the terms of such trust to income beneficiaries, unless a deduction was allowed under section 170(f)(2)(B), 2055(e)(2)(B), or 2522(c)(2)(B). Although section 4941 does not impose a tax on a split-interest trust when an act of self-dealing occurs (tax is imposed on the disqualified person (section 4941(a)(1)) or on a foundation manager (section

4941(a)(2)), a split-interest trust with respect to which there has been an act of self-dealing is required to report it to the Service on its annual information return.

H and W are the settlors of Trust and its current trustees. Settlors of a trust are treated as substantial contributors under section 507(d)(2)(A), and trustees of a split-interest trust are treated as foundation managers under section 4946(b)(1). H and W are therefore disqualified persons with respect to Trust. *See* section 4946(a)(1)(A) and (B).

Section 4941(d)(1) identifies six types of transactions as self-dealing for purposes of section 4941. Of these six, only two are relevant to the proposed transaction: the sale or exchange of property between a private foundation and a disqualified person (section 4941(d)(1)(A)) and the transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a private foundation (section 4941(d)(1)(E)).

The proposed division of Trust into Trusts A and B is similar to the situations considered in Rev. Rul. 2008-41. Similar to Situations 1 and 2 of Rev. Rul. 2008-41, neither H nor W will receive any additional interest in the Trust assets following the proposed division into Trusts A and B. Trusts A and B will have the same governing provisions as Trust, and therefore H and W will be entitled to the same percentage unitrust interest after the division as before. H and W have also represented that at the time Trust is divided, the assets allocated to Trust A and Trust B will be fairly representative of the aggregate adjusted bases of the Trust assets and that the division of the assets between Trust A and Trust B will be on a pro-rata basis with respect to each major class of investments held at the date of the division, and within each class, will be fairly representative of the overall appreciation or depreciation of the assets therein. The remainder interest of Trust will be preserved exclusively for charitable interests, and there will be no increase in the unitrust amount at the expense of the charitable interest as a result of the proposed division. As in Rev. Rul. 2008-41, H and W have paid all legal and other expenses and costs incident to the division of Trust and this ruling request.

Although, unlike in Rev. Rul. 2008-41, Trusts A and B will have different charitable remainder beneficiaries, this is due to H and W's retained power to vary the charitable remainder beneficiaries. The Year 3 designation of Foundation 1 as one of two co-equal remainder beneficiaries of Trust was also subject to change due to the retained power of H and W in their individual capacities. Consequently, any changes in Foundation 1's contingent remainder interest due to the division of Trust and designation of additional charitable remainder beneficiaries would not give rise to self-dealing.

The division of Trust into Trusts A and B is not a sale or exchange, and therefore is not a sale or exchange between a split-interest trust and a disqualified person. Nor does the proposed division result in the transfer of the income or assets of Trust to disqualified persons, or the use of such assets by or for the benefit of disqualified persons. The unitrust amount payable under the terms of Trust and under the terms of Trusts A and B, is not subject to section 4941, and H and W will not receive any other money, property, or other benefit through the proposed transaction other than the incidental benefit of

facilitating their charitable endeavors. This incidental benefit does not give rise to an act of self-dealing under section 4941. *See* Treas. Reg. § 53.4941(d)-2(f)(2).

Because the proposed division of Trust into Trusts A and B is not a sale or exchange between a split-interest trust and a disqualified person and does not result in the transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a split-interest trust, the proposed division and termination of Trust does not result in self-dealing within the meaning of section 4941(d)(1) by either H or W with respect to Trust.

Ruling 2 Analysis

Foundation 1 is a private operating foundation within the meaning of section 4942(j)(3). H is a founder, board member, and a substantial contributor to Foundation 1, and is therefore a disqualified person with respect to Foundation 1. *See* section 4946(a)(1)(A) and (B). W is a disqualified person with respect to Foundation 1 as a family member of a disqualified person. *See* section 4946(a)(1)(D).

Foundation 2 is a private nonoperating foundation. W is a founder, board member, and a substantial contributor to Foundation 2, and is therefore a disqualified person with respect to Foundation 2. *See* section 4946(a)(1)(A) and (B). H is a disqualified person with respect to Foundation 2 as a family member of a disqualified person. *See* section 4946(a)(1)(D).

Pursuant to the proposed division of Trust, the trustees will allocate all of Trust's assets to Trust A and Trust B. Trust A and Trust B will be split-interest trusts under section 4947(a)(2) and will be treated as private foundations for purposes of sections 507 and 4941. Trust will not receive any consideration for this allocation. After the assignment by H and W of their respective unitrust interests in Trust B to the Trust B Remainder Beneficiaries and the termination of Trust B (in accordance with Article VI of Trust, as clarified by the order of State Court), Trust B will distribute all of its assets to the Trust B Remainder Beneficiaries, in proportion to their respective percentage interests in Trust B. Trust B will not receive any consideration for this distribution. Accordingly, the proposed division of Trust into Trusts A and B and the subsequent Trust B distribution to the Trust B Remainder Beneficiaries will qualify as transfers described in section 507(b)(2). *See* Rev. Rul. 2008-41, *supra*.

The proposed transfer of assets from Trust B to the Trust B Remainder Beneficiaries is a section 507(b)(2) transfer. The Trust B Remainder Beneficiaries are all organizations described in section 501(c)(3) and therefore are not disqualified persons for purposes of section 4941. *See* Treas. Reg. § 53.4946-1(a)(8). The transfer of the Trust B assets to the Trust B Remainder Beneficiaries therefore does not constitute self-dealing within the meaning of section 4941(d)(1) because it is not a transaction between a split-interest trust and a disqualified person. In addition, as discussed above, H and W will not receive any money, property, or other benefit through the proposed transaction, other

than the incidental benefit of facilitating their charitable endeavors. Accordingly, the proposed transaction does not constitute self-dealing between either H or W and Foundation 1 or Foundation 2.

Requested Ruling 3

Whether the Proposed Transaction will entitle H and W to an income tax charitable deduction under section 170 for the value of the Trust B unitrust interests transferred to the charitable remainder beneficiaries, including Foundation 1 and Foundation 2.

Law

Section 170(a)(1) of the Code provides that there shall be allowed as an income tax deduction any contribution or gift to or for the use of organizations described in section 170(c), payment of which is made within the taxable year.

Section 170(c)(2) provides that the term "charitable contribution" means a contribution or gift to or for the use of, as pertinent here, a corporation, trust, or community chest, fund, or foundation: (1) created or organized in the United States, or in any possession thereof, or under the law of the United States, any State, the District of Columbia, or any possession of the United States; (2) organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes . . .; (3) no part of the net earnings of which inures to the benefit of any private shareholder or individual; and (4) which is not disqualified for a tax exemption under section 501(c)(3) of the Code by reason of attempting to influence legislation, and which does not participate in, or intervene in, any political campaign on behalf of (or in opposition to) any candidate for public office.

Section 170(f)(3)(A) of the Code provides that a contribution (not made by a transfer in trust) of less than the taxpayer's entire interest in property is not allowed as a charitable deduction except to the extent such contribution would have been allowed as a deduction had it been transferred in trust.

Section 170(f)(3)(B)(ii) of the Code provides that section 170(f)(3)(A) does not apply to a contribution of an undivided portion of the taxpayer's entire interest in property.

Treas. Reg. §§ 1.170A-6(a)(2) and 1.170A-7(a)(2)(i) provide that a deduction is allowed for a contribution of a partial interest in property if such interest is the taxpayer's entire interest in the property, such as an income interest or a remainder interest. If, however, the property in which such partial interest exists was divided in order to create such interest and thus avoid certain provisions of section 170(f), the deduction will not be allowed (collectively, "the partial interest rules").

Treas. Reg. § 1.170A-7(b)(1) provides that an undivided portion of a taxpayer's entire interest in property must consist of a fraction or percentage of each and every

substantial interest or right owned by the taxpayer in the property and must extend over the entire term of the taxpayer's interest in the property.

In Situation 1 of Rev. Rul. 86-60, 1986-1 C.B. 302, the Service considered whether a taxpayer's donation of an annuity interest in a charitable remainder trust (CRAT) qualified for the charitable contribution deduction under section 170. There, the taxpayer—A—previously created a CRAT described in section 664(d)(1) and retained an annuity interest for life. Taxpayer A later donated their annuity interest to the remainder beneficiary, a charitable organization described in section 170(c). Although A had previously divided the interest A held in the property, the division was not to avoid section 170(f)(3)(A). Rev. Rul. 86-60 concludes, based on sections 1.170A-6(a)(2) and 1.170A-7(a)(2)(i) of the regulations, that the gift by A of A's retained life annuity in the CRAT to the remainder beneficiary qualifies for a charitable contribution deduction under section 170.

Analysis

The proposed gift by H and W is analogous to Situation 1 in Rev. Rul. 86-60. The distinction between Situation 1 in Rev. Rul. 86-60 and the present request is the proposed division of Trust into two trusts, Trust A and Trust B. H and W propose to then contribute their respective unitrust interests in Trust B to the Trust B Remainder Beneficiaries. As the trustees of Trust, H and W propose to effect a termination of Trust B so that all of the Trust B assets will be distributed to the Trust B Remainder Beneficiaries, in proportion to their respective percentage interests in Trust B. Additionally, two of the Trust B Remainder Beneficiaries are private foundations.

H and W represent that they did not divide their interests in the property originally transferred to the Trust to avoid the partial interest rules. H and W now intend to effect the contribution of an undivided portion of their entire current interest in Trust to the Trust B Remainder Beneficiaries. This is accomplished by dividing Trust into two trusts and then the assignments by H and W of their entire respective unitrust interests in Trust B to the Trust B Remainder Beneficiaries. Similar to taxpayer A in Rev. Rul. 86-60, H and W would be entitled to charitable contribution deductions for contributions of the undivided portion of their respective unitrust interests in Trust to the Trust B Remainder Beneficiaries under the rule in section 170(f)(3)(B)(ii). That H and W, as trustees, will divide Trust before making the contribution does not adversely affect the charitable contribution deduction.

Accordingly, we rule that H and W are entitled to an income tax charitable deduction under section 170 for the donation of their unitrust interests in Trust B that will be transferred to the Trust B Remainder Beneficiaries. H and W's deduction will be subject to any applicable limitations under section 170, including section 170(b), and subject to any applicable limitations under other sections of the Code.

Requested Ruling 4

Whether the Proposed Transaction will entitle H and W to a gift tax deduction under section 2522 for the actuarial value of the unitrust interest transferred to the charitable remainder beneficiaries, including Foundation 1 and Foundation 2.

Law

Section 2501(a)(1) imposes a tax, for each calendar year, on the transfer of property by gift by any individual, resident or nonresident.

Section 2511 provides that the tax imposed by section 2501 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.

Under section 2512(a), if a gift is made in property, the value of the property on the date of the gift is 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 exceeds the value of the consideration received shall be deemed a gift.

Under Treas. Reg. § 25.2512-5(a), the fair market value of an annuity or unitrust interest is its present value, determined in accordance with § 25.2512-5(d).

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 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.

Section 2522(c)(2) disallows the gift tax charitable deduction where a donor transfers an interest in property (other than an interest described in section 170(f)(3)(B)) to a person, or for a use, described in section 2522(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 section 2522(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 section 664) or a pooled income fund (described in section 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)(a unitrust interest).

Under Treas. Reg. § 25.2522(c)-3(d)(2)(v), the present value of a unitrust interest is determined by subtracting the present value of all interests in the transferred property other than the unitrust interest from the fair market value of the transferred property. Under Treas. Reg. § 25.2522(c)-3(d)(2)(ii), the present value of a remainder interest in a charitable remainder unitrust is to be determined under Treas. Reg. § 1.664-4.

Situation 1 of Rev. Rul. 86-60 considers a situation where A, in 1980, creates a charitable remainder annuity trust pursuant to which A retained the right to receive an annuity interest for life. On A's death, the trust corpus is to pass to charity. In 1984, A transfers A's entire annuity interest to the charitable remainder beneficiary. Following the transfer, A did not retain any interest in the trust, and neither at that time nor at any prior time did A make a transfer of trust property to a person, or for a use, not described in section 2522(a). Consequently, A's transfer of the annuity interest to charity is not required to be in a form described in Treas. Reg. §§ 2522(c)(2)(B) and 25.2522(c)-3(c)(2) in order to qualify for the charitable deduction. Accordingly, A's transfer of the annuity interest to charity qualifies for a deduction under section 2522(a).

Analysis

In this case, H and W, as the trustees of Trust, intend to divide Trust into Trust A and Trust B. Following the division of Trust, H and W will assign their entire respective unitrust interests in Trust B to the Trust B Remainder Beneficiaries, in proportion to their respective percentage interests in the remainder of Trust B. The irrevocable assignments of these interests are completed transfers for gift tax purposes. After the assignments, neither H nor W will retain any interest in Trust B. Further, H and W have not made a transfer to a person, or for a use, not described in section 2522(a), either before or at the time of the transfer of their unitrust interest in Trust B. The transfer by H and W of their entire interest in Trust B is similar to the transfer described in Situation 1 of Rev. Rul. 86-60.

Based on the foregoing and ruling 3 herein, we conclude that for the year in which H and W transfer their unitrust interest in Trust B to the Trust B Remainder Beneficiaries, H and W will be entitled to a gift tax charitable deduction under section 2522(a) to the extent of the value of the unitrust interest transferred as of the date of transfer. H and W will also be entitled to a gift tax charitable deduction under section 2522 to the extent of the present value of the Trust B remainder interest as of the date of transfer. The transfer of the Trust B remainder interest becomes a completed gift when the irrevocable designation of the Trust B Remainder Beneficiaries becomes effective. Accordingly, H and W will each be entitled to a gift tax charitable deduction of 50% of the entire value of Trust B.

Requested Ruling 5

Whether the Proposed Transaction constitutes a “taxable expenditure” under section 4945(d) subject to the excise tax under section 4945(a) and gives rise to expenditure responsibility under section 4945(d)(4) and (h).

Law

Section 4947(a)(2) provides, in pertinent part, that in the case of a split-interest trust (such as a charitable remainder unitrust), section 4945 shall apply as if such trust were a private foundation, but, under section 4947(a)(2)(A), not with respect to any amounts payable under the terms of such trust to income beneficiaries, unless a deduction was allowed for those amounts under sections 170(f)(2)(B), 2055(e)(2)(B), or 2522(c)(2)(B).

Section 4945 imposes an excise tax on each taxable expenditure described in section 4945(d) made by a private foundation.

Section 4945(d)(4) provides that the term “taxable expenditure” includes any amount paid or incurred by a private foundation as a grant to an organization, unless that organization is a public charity described in sections 509(a)(1) or (2), a supporting organization described in section 509(a)(3) (other than an organization described in section 4942(g)(4)(A)(i) or (ii)), or an exempt operating foundation (as defined in section 4940(d)(2)), or the private foundation exercises expenditure responsibility with respect to such grant in accordance with section 4945(h).

Section 4945(h) provides that the term “expenditure responsibility” means that a private foundation is responsible to exert all reasonable efforts and to establish adequate procedures (1) to see that the grant is spent solely for the purpose for which made, (2) to obtain full and complete reports from the grantee on how the funds are spent, and (3) to make full and detailed reports with respect to such expenditures to the Secretary.

Treas. Reg. § 53.4945-5(b)(2)(i) provides that a private foundation must conduct a pre-grant inquiry before making a grant to an organization with respect to which expenditure responsibility must be exercised. However, in the case of an organization, such as a trust described in section 4947(a)(2), which is required by the terms of its governing instrument to make payments to a specified organization exempt from taxation under section 501(a), a less extensive pre-grant inquiry is required.

Treas. Reg. § 53.4945-5(b)(7) confirms that §§ 1.507-3(a)(7), 1.507-3(a)(8)(ii)(f), and 1.507-3(a)(9) govern the extent to which the expenditure responsibility rules contained in section 4945(d)(4) and (h) apply to transfers of assets described in section 507(b)(2).

Treas. Reg. § 53.4945-5(c) provides that in the case of grants described in section 4945(d)(4), and except as provided in subparagraph (2) with respect to capital endowment grants, the granting private foundation shall require reports on the use of

the funds, compliance with the terms of the grant, and the progress made by the grantee toward achieving the purposes for which the grant was made. Such reports must be furnished to the grantor within a reasonable period of time after the close of the annual accounting period of the grantee.

Treas. Reg. § 53.4945-5(d) provides that to satisfy the report-making requirements of section 4945(h)(3), a granting foundation must provide the required information on its annual information return for each taxable year with respect to each grant made during the taxable year which is subject to the expenditure responsibility requirements of section 4945(h).

Treas. Reg. § 1.507-3(a)(7) provides, in part, that, except as provided in § 1.507-3(a)(9), if a transferor private foundation has disposed of all of its assets, then, during any period in which the transferor has no assets, section 4945(d)(4) and (h) shall not apply to the transferee or the transferor with respect to any expenditure responsibility grants made by the transferor. However, this exception does not apply with respect to any information reporting requirements imposed by section 4945 and the regulations thereunder for any year in which any such transfer is made.

Treas. Reg. § 1.507-3(a)(9) provides, in part, that if a private foundation transfers all of its net assets to one or more private foundations that are effectively controlled, directly or indirectly, by the same person(s) which effectively controlled the transferor private foundation, then, for purposes of chapter 42 (including section 4945), such a transferee private foundation shall be treated as if it were the transferor.

Rev. Rul. 2002-28, 2002-20 IRB 941, provides, in part, that, once a private foundation distributes all of its assets to one or more other effectively controlled private foundations, the transferee foundations are treated as the transferor foundation rather than as the recipients of expenditure responsibility grants. Therefore, no expenditure responsibility must be exercised under section 4945(d)(4) or (h) in that case. However, Rev. Rul. 2002-28 also concludes that a transferor foundation is required to exercise expenditure responsibility over its outstanding grants until the transferor disposes of all of its assets. Accordingly, a transferor foundation still must meet the requirements of section 4945(h) for its outstanding grants for the year in which a section 507(b)(2) transfer is made.

Rev. Rul. 2008-41, *supra*, provides that when a charitable remainder trust is divided pro rata into two or more separate trusts, the transfer of assets from the transferor trust to the transferee trusts is not an expenditure that requires expenditure responsibility by the transferor trust, pursuant to either Treas. Reg. § 1.507-3(a)(9) (if the transferor and transferee trusts are effectively controlled by the same person(s)) or Treas. Reg. § 1.507-3(a)(7) (if no effective control).

Analysis

As explained above, Trust is a split-interest trust under section 4947(a)(2) and is therefore subject to section 4945 as if it were a private foundation. No deductions were taken with regard to amounts payable to Trust's income beneficiaries; therefore section 4945 is applicable only with respect to the charitable remainder interest. The proposed transaction involves a pro-rata transfer of all of Trust's assets to Trusts A and B, followed by the transfer of all of Trust B's assets to Foundation 1, Foundation 2, and Charity. As explained above, these transfers will be transfers described in section 507(b)(2).

The transfer of all assets from Trust to Trusts A and B is a section 507(b)(2) transfer to transferees effectively controlled by persons (H and W) who control the transferor. Accordingly, no expenditure responsibility arises with respect to this transfer because Trusts A and B are treated as the transferor Trust rather than as the recipients of expenditure responsibility grants. *See* Treas. Reg. § 1.507-3(a)(9); Rev. Rul. 2002-28, *supra*; Rev. Rul. 2008-41, *supra*.

Trust B will distribute all of its assets to charitable remainder beneficiaries Foundation 1, Foundation 2, and Charity. Charity is a public charity described in section 509(a)(2), and therefore Trust B will not need to exercise expenditure responsibility with respect to any assets distributed to Charity. *See* section 4945(d)(4)(A)(i).

Foundation 1 is a private operating foundation described in section 4942(j)(3), but it is not an exempt operating foundation described in section 4940(d)(2). In addition, Foundation 2 is a private nonoperating foundation described in section 509(a). Foundation 1 and Foundation 2 are not effectively controlled by H and W such that Treas. Reg. § 1.507-3(a)(9) would apply. Trust B will therefore need to exercise expenditure responsibility with respect to the Trust B assets distributed to Foundation 1 and Foundation 2 to avoid imposition of the section 4945 excise tax.

Treas. Reg. § 1.507-3(a)(7) provides, in part, that, except as provided in Treas. Reg. § 1.507-3(a)(9), a transferor foundation is not required to exercise expenditure responsibility during any period in which the transferor has no assets. This exception, however, does not apply with respect to any information reporting requirements imposed by section 4945 and its regulations for any year in which a section 507(b)(2) transfer is made. *See* Treas. Reg. § 53.4945-5(c) and (d) (describing the applicable information reporting requirements).

As explained above, Treas. Reg. § 1.507-3(a)(9) does not apply to the proposed transfers from Trust B to Foundation 1 and Foundation 2. Trust B must therefore exercise expenditure responsibility with respect to the transfers to Foundation 1 and Foundation 2 for the year in which those transfers are made. Given H and W's significant involvement in Foundation 1 and Foundation 2, and that the grants are required by the terms of Trust B, a less extensive pre-grant inquiry would be required in

this case. *See* Treas. Reg. § 53.4945-5(b)(2). In addition, because the grants will be made as part of a final distribution and termination of Trust B, the information reporting requirements in Treas. Reg. § 53.4945-5(c) and (d) will be satisfied provided that Trust B collects at least one report from each of Foundation 1 and Foundation 2 in the year of the transfer and provides the report required by section 4945(h)(3) and Treas. Reg. § 53.4945-5(d) on its final return.

Other than complying with these final information reporting requirements, for tax years after the year of transfer, Trust B will not be required to exercise expenditure responsibility under section 4945(d)(4) and (h) during any period in which Trust B has no assets.

Requested Ruling 6

> Whether the Trustees of terminating Trust B will be required to file the annual information return required by section 6034 for tax years after the tax year of distribution of all of Trust B's property and termination.

Law

Section 6034 imposes an annual information return reporting requirement on all split-interest trusts described in section 4947(a)(2).

Treas. Reg. § 1.507-1(b)(9) provides that a private foundation that transfers all of its net assets is required to file the annual information return required by section 6033 for the taxable year in which such transfer occurs. A private foundation is not, however, required to file annual information returns for any taxable year following the taxable year in which the last of such transfers occurred, if the foundation does not have legal or equitable title to any assets and does not engage in any activity at any time during such subsequent taxable years.

Treas. Reg. § 53.6011-1(c) provides that for taxable years ending on or after December 31, 1975, every trust described in section 4947(a)(2) which is subject to any of the provisions of Chapter 42 as if it were a private foundation shall file an annual return on Form 5227.

Analysis

Trust B, once formed, will be a split-interest trust under section 4947(a)(2) and will be subject to the annual information reporting requirement under section 6034. As stated above, split-interest trusts are treated as private foundations for purposes of section 507, subject to the exceptions provided in section 4947(a)(2).

As a result of the proposed transaction, Trust B will distribute all of its assets to the Trust B Remainder Beneficiaries through a section 507(b)(2) transfer and terminate as an

entity. Following this distribution and termination, there will be no trust corpus and no trust activity. Trust B will be required to file an annual information return (Form 5227, *Split-Interest Trust Information Return*) for the year in which the distribution occurs but will not be required to file annual information returns for years following the year of distribution and termination as an entity. *See* Treas. Reg. §§ 1.507-1(b)(9) and 53.6011-1(c).

Requested Ruling 7

Whether the Proposed Transaction would constitute a termination of foundation status under section 507(a) subject to application of the excise tax under section 507(c).

Law

Section 507(a) provides that, except as provided in section 507(b), a private foundation's tax status shall be terminated only if (1) the organization notifies the Secretary of its intent to terminate its status as a private foundation, or (2) it is involuntarily terminated by the Secretary due to willful repeated acts (or failures to act), or a willful and flagrant act (or failure to act), giving rise to chapter 42 liability. Upon such a termination, section 507(c) imposes a termination tax that generally equals the lower of the aggregate tax benefit (as defined in section 507(d)) resulting from the tax-exempt status of the terminating foundation or the fair market value of the foundation's net assets.

Section 507(b)(2) provides that, in the case of the transfer of assets of any private foundation to another private foundation pursuant to any liquidation, merger, redemption, recapitalization, or other adjustment, organization, or reorganization, the transferee foundation is not treated as a newly created organization.

Treas. Reg. § 1.507-1(b)(6) generally confirms that, if a private foundation transfers all or part of its assets to one or more private foundations pursuant to a transfer described in section 507(b)(2) and Treas. Reg. § 1.507-3(c), such transferor foundation will not have terminated its private foundation status under section 507(a)(1).

Treas. Reg. § 1.507-4(b) provides that the excise tax on termination of private foundation status under section 507(c) generally does not apply to a transfer of assets pursuant to section 507(b)(2) unless the provisions of section 507(a) become applicable.

Analysis

As explained above, the proposed transfers from Trust to Trusts A and B are transfers described in section 507(b)(2). Because Trust (1) is transferring all of its assets through transfers described in section 507(b)(2), (2) is not giving notice of termination under

section 507(a)(1), and (3) has not committed any acts that give rise to liability under chapter 42, the proposed transfers would not constitute a termination of foundation status under section 507(a). The section 507(c) termination tax does not apply to the proposed transfers because the transfers are described in section 507(b)(2) and the provisions of section 507(a) are not applicable. *See* Treas. Reg. § 1.507-4(b); Rev. Rul. 2008-41, *supra*.

Requested Ruling 8

Whether the Proposed Transaction will adversely affect the qualification of Trust A as a charitable remainder trust.

Law

Section 664(c) provides, generally, that a charitable remainder unitrust shall be exempt from federal income tax.

Section 664(d)(2) provides that a charitable remainder unitrust is a trust (A) from which a fixed percentage (which is not less than 5 percent nor more than 50 percent) of the net fair market value of its assets, valued annually, is to be paid, not less often than annually, to one or more persons (at least one of which is not an organization described in section 170(c) and, in the case of individuals, only to an individual who is living at the time of the creation of the trust) for a term of years (not in excess of 20 years) or for the life or lives of such individual or individuals, (B) from which no amount other than the payments described in section 664(d)(2)(A) and other than qualified gratuitous transfers described in section 664(d)(2)(C) may be paid to or for the use of any person other than an organization described in section 170(c), (C) following the termination of the payments described in section 664(d)(2)(A), the remainder interest in the trust is to be transferred to, or for the use of, an organization described in section 170(c) or is to be retained by the trust for such a use or, to the extent the remainder interest is in qualified employer securities (as defined in section 664(g)(4)), all or part of such securities are to be transferred to an employee stock ownership plan (as defined in section 4975(e)(7)) in a qualified gratuitous transfer (as defined by section 664(g)), and (D) with respect to each contribution of property to the trust, the value (determined under section 7520), of such remainder interest in such property is at least 10 percent of the net fair market value of such property as of the date such property is contributed to the trust.

Treas. Reg. § 1.664-3(a)(4) provides that no amount other than the unitrust amount may be paid to or for the use of any person other than an organization described in section 170(c). However, the governing instrument may provide that any amount other than the unitrust amount shall be paid (or may be paid in the discretion of the trustee) to an organization described in section 170(c) provided that, in the case of distributions in kind, the adjusted basis of the property distributed is fairly representative of the adjusted basis of the property available for payment on the date of payment.

Analysis

H and W, as the trustees of Trust, propose to divide Trust into Trust A and Trust B. The terms of Trust A and Trust B will be the same as the terms of Trust. Pursuant to Article VI of Trust, as clarified by the order of State Court, H and W will then, in their individual capacities, assign their respective unitrust interests in Trust B to the Trust B Remainder Beneficiaries, in proportion to their respective percentage interests in the remainder of Trust B. As the trustees of Trust, H and W will effect the termination of Trust B and the distribution of all Trust B assets to the Trust B Remainder Beneficiaries. Trust A will continue to be in the form of and will continue to function as a charitable remainder unitrust within the meaning of section 664(d)(2). Thus, the division of Trust into Trust A and Trust B, followed by the termination of Trust B, will not cause Trust A to cease to function as a charitable remainder unitrust within the meaning of section 664(d)(2).

RULINGS

Based on the foregoing, and assuming the accuracy of the facts and representations set forth herein, we rule as follows:

1.) The Proposed Transaction will not constitute self-dealing within the meaning of section 4941(d)(1) by either H or W with respect to Trust.
2.) The Proposed Transaction will not constitute self-dealing within the meaning of section 4941(d)(1) by either H or W with respect to Foundation 1 or Foundation 2.
3.) H and W are entitled to an income tax charitable deduction under section 170 for the donation of their respective unitrust interests in Trust B that will be transferred to the Trust B Remainder Beneficiaries. H and W's deduction will be subject to any applicable limitations under section 170, including section 170(b), and subject to any applicable limitations under other sections of the Code.
4.) H and W will be entitled to gift tax charitable deductions under section 2522(a) to the extent of the value of the unitrust interest transferred as of the date of transfer. H and W will also be entitled to gift tax charitable deductions for the value of the Trust B remainder interest when the transfer of the remainder interest becomes a completed gift. Therefore, H and W will each be entitled to a gift tax charitable deduction of 50% of the entire value of Trust B.
5.) The Proposed Transaction will not constitute a "taxable expenditure" under section 4945(d) provided that expenditure responsibility under section 4945(d)(4) and (h) is exercised for the year in which the transfers to Foundation 1 and Foundation 2 are made. For tax years after the year of transfer, Trust B will not be required to exercise expenditure responsibility during any period in which Trust B has no assets.
6.) The Trustees of terminating Trust B will not be required to file the annual information return required by section 6034 for tax years after the tax year of distribution of all of Trust B's property and termination.

7.) The Proposed Transaction will not constitute a termination of foundation status under section 507(a) subject to application of the excise tax under section 507(c).
8.) The Proposed Transaction will not cause Trust A to cease to function as a charitable remainder unitrust within the meaning of section 664(d)(2).

The rulings contained in this letter are based upon information and representations submitted by or on behalf of H and W and accompanied by penalties of perjury statements executed by H and W and upon the understanding that there will be no material changes in the facts. While this office has not verified any of the material submitted in support of the request for a ruling, it is subject to verification on examination. The Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes) will revoke or modify a letter ruling and apply the revocation retroactively if: 1) there has been a misstatement or omission of controlling facts; 2) the facts at the time of the transaction are materially different from the controlling facts on which the letter ruling was based; or 3) the transaction involves a continuing action or series of actions and the controlling facts change during the course of the transaction. *See* section 11.05 of Rev. Proc. 2025-1, 2025-1 IRB 1.

This letter does not address the applicability of any section of the Code or regulations thereunder other than those sections specifically described. Except as expressly provided herein, no opinion is expressed or implied concerning the federal tax consequences of any fact or issue discussed or referenced in this letter.

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

A copy of this letter must be attached to any tax return to which it is relevant. Alternatively, if a taxpayer files returns electronically, the taxpayer may satisfy this requirement by attaching a statement to the return that provides the date and control number of this letter.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

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

Sincerely,

Theodore R. Lieber
Senior Technician Reviewer
Exempt Organizations Branch 1
(Employee Benefits, Exempt Organizations, and Employment Taxes)

cc: