INTERNAL REVENUE SERVICE
Index Nos.: 2501.00-00, 2601.00-00, 507.00-00
1001.00-00, 643.00-00, 4941.00-00

Number: **199930036**
Release Date: 7/30/1999

CC:DOM:P&SI:2 - PLR-109746-98

May 5, 1999

Trust 1 =

Trust 2 =

Trust 3 =

Settlor =

A =

B =

C =

Charitable Term =

Foundation =

State X =

State Y =

Company =

$x =

Court =

y =

Dear :

This is in reply to a letter written on behalf of Trust 1, by its authorized representative, dated February 24, 1998, and subsequent correspondence, requesting rulings with respect to the federal tax consequences of a proposed partition of Trust 1 into three separate trusts.

FACTS

The information submitted states that Settlor created Trust 1 on December 16, 1994, as a charitable lead annuity trust to be governed by the laws of State X. On such date, Settlor transferred and assigned assets to Trust 1. No person has transferred any other property to Trust 1 since December 16, 1994. Settlor died on February 21, 1995. Trust 1 is described in section 4947(a)(2) of the Internal Revenue Code and, thus, is subject to the private foundation provisions described in that section.

During each taxable year of the Charitable Term, the Trustees are to distribute an annuity of 15.2506 percent of the initial fair market value of the assets contributed to Trust 1 to such one or more charitable organizations as the Trustees select. In order to qualify to receive a distribution, each recipient charitable organization must be an organization described in sections 170(c)(2), 2055(a), and 2522(a) of the Code. Upon expiration of the Charitable Term, the remaining trust assets are to be divided and allocated into as many separate equal trusts as are necessary so that there shall be one such trust named for each child of Settlor who is living at the end of the Charitable Term. If no child of Settlor is living at the end of the Charitable Term, the remaining trust assets are to be divided into shares in the manner required to effect a per stirpes distribution among Settlor’s then living descendants, with each such share so created for a descendant of Settlor to be held in a separate trust named for that descendant.

Currently, the assets of Trust 1 consist of a limited partnership interest valued at approximately $x.

Pursuant to Article V.A.5. of the Trust Instrument, the powers of the Trustees include the power to make allocations, divisions, and distributions of trust property in cash or in kind, or partly in each; to allocate different kinds or disproportionate shares of property or undivided interests in property among the beneficiaries or separate trusts, without liability for, or obligation to make compensating adjustments by reason of, disproportionate allocations of unrealized gain for federal income tax purposes; and to determine the value of any property so allocated, divided, or distributed.

Trust 1 has three Trustees, A, B, and C. Pursuant to Article VII.B. of the Trust Instrument, during the Charitable Term, the then acting directors of the Foundation shall be the Trustees of Trust 1, such that if any one of the Trustees ceases to serve as a director of the Foundation, the successor director shall replace the previous director as a Trustee.

The Trustees have reached an impasse as to the charitable organizations which should receive the balance of the annuity, and with respect to investing and managing Trust 1's assets. In addition, A, who lives in State Y, has expressed concern regarding her ability to effectively participate in, and oversee the administration of Trust 1's funds and activities since the administration takes place primarily in State X (the residence of B and C).

In an effort to (i) address the impasse reached by the Trustees (by allowing them to become responsive to the differing charitable objectives of the Trustees) and (ii) to reduce trustee fees and administrative costs and address the concerns of A, and without any direct or substantial benefit to the Trustees, the Trustees propose to enter into the following proposed transaction. The Trustees propose to file a suit in Court to partition Trust 1 into three equal but separate trusts, by creating two new trusts, Trust 2 and Trust 3, ("New Trusts") to which Trust 1 would transfer, in equal portions, two-thirds of its current net assets, and to provide for a sole trustee for each of the trusts. (Trust 1, Trust 2 and Trust 3 are collectively referred to as "Trusts"). An attorney ad litem will be appointed, if necessary, to represent the contingent beneficiaries. Trust 2 and Trust 3 will also be charitable lead annuity trusts.

In order to effect the proposed transaction, the following steps will be taken so that each of the Trusts will have the following terms:

a. The assets of Trust 1 will be divided equally among the trusts. As to any assets which, due to differing times of acquisition, have different bases, such assets will be divided among the Trusts with the effect that each of the Trusts will acquire the same basis in such assets.

b. With the exception of deletions of provisions from Trust 1 which by their nature have no further operative effect and as discussed in paragraph (c) below with respect to the Trustees, the terms of each of the Trusts will be identical to the terms of Trust 1 as to beneficiaries, annuity payments, income and principal distributions of the continuing trusts for Settlor's descendants, standards for distributions, termination, disposition upon termination, investment standards, and powers of the trustee. The responsibility for distributing the annuity will be equally shared by the three Trusts. Each of the Trusts will provide that during each taxable year of the balance of the Charitable Term the Trustee is to distribute an annuity amount of one-third of 15.2506 percent of the value of the assets initially contributed to Trust 1 to such one or more charitable organizations as the Trustee selects. In order to qualify to receive a distribution, each recipient must be a charitable organization described in sections 170(c)(2), 2055(a), and 2522(a) of the Code. Upon expiration of the Charitable Term, the remaining assets of each of the Trusts will be divided into shares in the manner required to create one share for each child of Settlor who is then living, if any, with such shares to be held in further trust for the benefit of such surviving children of Settlor.

c. In order to achieve a savings in trustee fees and administrative costs, the court petition will seek to appoint A as sole Trustee of Trust 2, and B as the sole Trustee of Trust 3, and to retain C as the sole Trustee of Trust 1. Moreover, the provisions regarding initial and successor trustees of Trust 1, Trust 2 and Trust 3 during the Charitable Term will be amended. The proposed amendment provides that during the Charitable Term, with respect to each separate trust, the trustee thereof (A, B, or C) shall have the power while such person is acting as trustee to appoint a successor trustee or co-trustee, or a succession of one or more successor trustees to serve as successor trustee or co-trustees of the trust. The initial trustee or any successor trustee may provide that any appointed successor trustee (or co-trustee) shall have the power to appoint its own successor trustee, trustees, or co-trustees. Any successor trustee appointed under this provision may be (i) any person, including the Chief Financial Officer or Chief Operating Officer of Company or (ii) any bank or trust company, within or outside of State X.

d. Each of the Trusts will be separately managed and administered.

e. Each of Trust 1 and the New Trusts will be responsible for the annuity amount for all three separate trusts, in the event that any single trust cannot satisfy its annuity amount for any years during the Charitable Term.

The judicial action to partition Trust 1 will be brought pursuant to State X Probate Code section y.

Neither Trust 2 nor Trust 3 will pay any consideration for a share of Trust 1's assets. Moreover, the proposed transaction will not be made out of Trust 1's current income. Further, if necessary, Trust 1 plans to exercise expenditure responsibility over all funds transferred to Trust 2 and Trust 3 as and for the time period required under section 4945.

A, B, and C represent that, although the proposed transaction contemplates the transfer of two-thirds of Trust 1's assets to Trust 2 and Trust 3, Trust 1 will not seek to terminate its private foundation status pursuant to section 507 of the Code, and that it has not committed willful repeated acts (or failures to act) or a willful or flagrant act (or failure to act) giving rise to liability under Chapter 42. Moreover, Trust 1 represents that any legal, accounting, and other expenditures incurred in connection with the proposed transaction will be reasonable, necessary, and consistent with the standards of ordinary business care and prudence and will be incurred in the good faith belief that the expenses are reasonable, necessary, and consistent with ordinary business care and prudence.

LAW AND ANALYSIS

Section 61(a)(3) of the Code provides that gross income includes gains derived from dealings in property.

Section 1001(a) of the Code provides for the determination of gain or loss on the sale or other disposition of property. Once such a sale or other disposition takes place, gain shall be the excess of the amount realized therefrom over the adjusted basis provided in section 1011 for determining gain, and the loss shall be the excess of the adjusted basis provided in such section for determining loss over the amount realized.

Section 1.1001-1(a) of the Income Tax Regulations provides that except as provided in Subtitle A of the Code, the gain or loss realized from the conversion of property into cash, or from the exchange of property for other property differing materially in kind or in extent, is treated as income or as loss sustained.

An exchange of property results in the realization of gain or loss under section 1001 if the properties exchanged are materially different. Cottage Savings Association v. Commissioner, 499 U.S. 554 (1991). There is a material difference when the exchanged properties embody legal entitlements "different in kind or extent" or if they confer "different rights and powers." Id. at 565.

A partition of jointly owned property is not a sale or other disposition of property where the co-owners of the joint property sever their joint interests, but do not acquire a new or additional interest as a result thereof. Thus, neither gain nor loss is realized on a partition. See Rev. Rul. 56-437, 1956-2 C.B. 507.

In Rev. Rul. 69-486, 1969-2 C.B. 159, distinguished by Rev. Rul. 83-61, 1983-1 C.B. 78, a non-prorata distribution of trust property was made in kind by the trustee, although the trust instrument and local law did not convey authority to the trustee to make a non-prorata distribution of property in kind. The distribution was effected as a result of mutual agreement between the trustee and beneficiaries. Because neither the trust instrument nor local law conveyed authority to the trustee to make a non-prorata distribution, Rev. Rul. 69-486 holds that the transaction is equivalent to a prorata distribution followed by an exchange between the beneficiaries and is therefore subject to the provisions of section 1001 and section 1002 of the Code.

The present case is distinguishable from Rev. Rul. 69-486 because after the proposed transaction, the same total amount will be paid to charities as annuities by Trust 1 and the New Trusts combined during the Charitable Term as would have been paid by Trust 1. Further, each of the Trusts will be responsible for the annuity amount for all three separate trusts, in the event that any single trust cannot satisfy its annuity amount for any years during the Charitable Term.

Further, after the Charitable Term ends, the beneficiaries of the successor trusts will be entitled to the same total benefits from the successor trusts that they would have been entitled to under the current trust agreement for Trust 1. (The difference will be that a beneficiary will be a beneficiary of three successor trusts due to the proposed transaction instead of being a beneficiary of one successor trust.) After the proposed transaction, successor trusts will be created by Trust 1 and the New Trusts for each of the individuals for whom successor trusts would have been created under the original trust agreement. The assets of the successor trusts will be in the same proportions as under the original Trusts.

The modification of the manner in which the successor trustees will be named during the Charitable Term is not a material difference for purposes of section 1001 or Cottage Savings. This will be a change in the way that the New Trusts are administered and will not otherwise change the legal entitlements of any beneficiary. During the Charitable Term the Trusts will each pay an annuity that is one-third of the annuity amount that was determined at the time that Trust 1 was created. Also, this change will not affect how trustees will be chosen after the end of the Charitable Term.

Therefore, Trust 1, the New Trusts, the beneficiaries of Trust 1 and of the New Trusts do not realize gain or loss under section 1001 of the Code or Cottage Savings as a result of the proposed transaction.

Section 1015(b) of the Code provides that if property is acquired by a transfer in trust (other than a transfer in trust by a gift, bequest, or devise), the basis shall be the same as it would be in the hands of the grantor increased in the amount of gain or decreased in the amount of loss recognized to the grantor on such transfer under the law applicable to the year in which the transfer was made.

Because no gain or loss will be realized upon the proposed transaction, the basis of the assets in each of the New Trusts will remain the same as the basis of the corresponding assets in Trust 1 prior to the proposed transaction.

Section 1223(2) of the Code provides that in determining the period for which the taxpayer has held property however acquired, there shall be included the period for which the property was held by any other person, if under chapter 1 of the Code such property has, for purposes of determining gain or loss from a sale or exchange, the same basis in whole or in part in the taxpayer’s hands as it would have in the hands of such other person.

Because the basis of the assets in the New Trusts will remain the same as the basis of the corresponding assets in Trust 1 prior to the proposed transaction, the holding period of the assets in each of the New Trusts will include the holding periods of the corresponding assets in Trust 1 prior to the proposed transaction.

Section 643(f) of the Code provides that, under regulations to be prescribed by the Secretary, two or more trusts shall be treated as one trust if (1) such trusts have substantially the same grantor or grantors and substantially the same primary beneficiary or beneficiaries, and (2) a principal purpose of such trusts is the avoidance of federal income tax.

A, B, and C represent that the primary purpose of establishing the New Trusts is the need to eliminate the impasse that has arisen among the trustees in choosing the charitable beneficiaries of Trust 1. By dividing Trust 1 into three separate trusts, A, B, and C will act independently of each other, thereby allowing each to act independently of the other in choosing the charitable beneficiaries. They further represent that avoidance of income tax is not a primary purpose of the New Trusts within the meaning of section 643(f)(2). Determining whether avoidance of income tax is a primary purpose of the New Trusts 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 of the District Director having examination jurisdiction over the tax returns. Therefore, provided that each of the Trusts is separately managed and administered and it is not determined that tax avoidance is a primary purpose of the New Trusts, each of the Trusts will be treated as a separate trust for federal income tax purposes.

Sections 673 through 677 of the Code set forth rules for determining whether a grantor is to be treated as the owner of a trust or any portion thereof.

Section 678(a) of the Code provides that a person other than the grantor is treated as the owner of any portion of a trust with respect to which (1) such person has a power exercisable solely by such person to vest the corpus or the income therefrom in such person, 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 sections 671 to 677, inclusive, subject a grantor of a trust to treatment as the owner thereof.

Settlor was the grantor of Trust 1. Under the laws of State X, only a court has the power to partition a trust and create the New Trusts. The court order will not cause the trust relationship to come into existence; that relationship was created by Settlor when she executed the Trust Agreement and transferred property to Trust 1. While the court order will partition Trust 1 to create the New Trusts, the order will not change the dispositive provisions set out for Trust 1. Under the court order, no beneficiary will acquire possession of, nor dominion over, the trust estate, but rather, the trust estate is to continue to be held in trust for their benefit. The beneficiaries cannot compel a termination of any of the trusts and a distribution of the trust assets. Accordingly, the beneficiaries of Trust 1 will not be treated as the owners of the New Trusts under sections 673 through 678 of the Code.

Section 2501 of the Code imposes a tax on the transfer of property by gift by any individual, resident or nonresident.

Section 2511 of the Code 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.

In the present case, the corpus of Trust 1 will be divided equally between Trust 1 and the two New Trusts. A and B will each be the sole trustee of one of the New Trusts and C will be the sole trustee of Trust 1. Each of the proposed separate trusts will contain the same provisions of Trust 1, except for certain administrative changes. The terms of the trusts will be identical to Trust 1 as to beneficiaries and the interests of the beneficiaries in Trust 1, investment standards, termination provisions, disposition on termination and powers of the trustee.

Based upon the facts submitted and the representations made, we conclude that the division of Trust 1 into three separate trusts will not result in a transfer by A, B, or C, that is subject to gift tax.

In addition, because no beneficiary of Trust 1 has transferred property to Trust 1 or will be treated as transferring property to the succeeding three separate trusts the proposed division of Trust 1 will not subject the trust property to inclusion in the gross estate of A, B, or C, under sections 2035, 2036, 2037, and 2038. However, we note that a fiduciary power to distribute corpus may constitute a general power of appointment under section 2041, to the extent that trust corpus can be distributed in discharge of the trustee’s legal obligation of support. See section 20.2041-1(c)(1) of the Estate Tax Regulations.

Section 4947(a)(2) of the Code describes trusts not exempt from federal income tax under section 501(a), not all of the unexpired interests in which are devoted to purposes in section

170(c)(2)(B), and which have amounts in trust for which a deduction was allowed under sections 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522 as split-interest trusts, and provides that sections 507, 508(e) (to the extent applicable), 4941, 4943, 4944, and 4945 shall apply as if such trusts were private foundations under section 509.

Section 507(a)(1) of the Code and section 1.507-1(b)(1) of the Income Tax Regulations provide that a private foundation may voluntarily terminate its private foundation status by submitting to the Service a statement of its intention to terminate its private foundation status pursuant to section 507(a)(1) and by paying any private foundation termination tax imposed under section 507(c).

Section 507(c) of the Code imposes an excise tax on a private foundation that voluntarily terminates its private foundation status pursuant to section 507(a)(1). This section 507(c) tax is equal to the lower of: (a) the aggregate tax benefits that have resulted from the foundation's section 501(c)(3) exempt status, or (b) the value of the net assets of the foundation.

Section 507(b)(2) of the Code concerns the transfer of assets by one private foundation to one or more other private foundation, and provides that each transferee foundation shall not be treated as a newly created organization.

Section 1.507-3(c)(1) of the regulations indicates that a transfer under section 507(b)(2) includes a transfer of assets from one private foundation to one or more other private foundations pursuant to any reorganization, which includes any significant disposition of 25 percent or more of the transferor private foundation's assets.

Section 1.507-3(a)1) of the regulations indicates that, in a transfer of assets from one private foundation to one or more private foundations pursuant to a reorganization, each transferee private foundation shall not be treated as a newly created organization, but shall succeed to the transferor's aggregate tax benefits under section 507(d).

Section 507(d) of the Code indicates that the aggregate tax benefits of an exempt private foundation include the value of its exemption from federal income tax and of the deductions taken by its donors during its existence.

Section 1.507-3(a)(8) of the regulations provides that certain tax provisions will carry over to any transferee private foundation that is given a transfer of assets from a transferor private foundation pursuant to section 507(b)(2) of the Code.

Section 1.507-3(a)(9)(i) of the regulations indicates that, if a transferor private foundation transfers assets to one or more other private foundations which are effectively controlled directly or indirectly by the same person or persons who effectively control the transferor foundation, then each transferee will be treated as if it were the transferor, for purposes of sections 4940 through 4948 of the Code and also sections 507 through 509. Each transferee is treated as the transferor in the proportion which the fair market value of the transferor’s assets transferred to each bears to the fair market value of all of the transferor’s assets immediately before the transfer.

Section 1.507-4(b) of the regulations provides that the excise tax on termination of private foundation status under section 507(c) of the Code does not apply to a transfer of assets pursuant to section 507(b)(2).

Sections 1.507-1(b)(7) and 1.507-3(d) of the regulations provide that a transferor foundation’s transfer of assets under section 507(b)(2) of the Code will not constitute any termination of the transferor’s status as a private foundation.

Section 4941 of the Code imposes excise tax on any act of self-dealing between a private foundation and any of its disqualified persons under section 4946.

Section 4942 of the Code requires that a private foundation must expend qualifying distributions under section 4942(g) that are for the conduct of exempt purposes. Under section 4942(g)(1)(A) of the Code and section 53.4942-3(a)(2)(i) of the Foundation and Similar Excise Tax Regulations, such qualifying distributions also include the reasonable administrative expenses incurred to conduct the foundation’s exempt purposes.

Section 4942(g)(1)(A) of the Code provides that a private foundation does not make any qualifying distribution under section 4942(g) where the distribution is a contribution to: (i) another organization controlled by the transferor or by one or more of the transferor’s disqualified persons, or (ii) any private foundation which is not an operating foundation under section 4942(j)(3).

Section 4945 of the Code imposes excise tax on a private foundation's making of any taxable expenditure under section 4945(d) of the Code.

Section 4945(d)(4) of the Code provides that, to avoid making a taxable expenditure, a transferor must exercise "expenditure responsibility" under section 4945(h) with respect to its grants to any grantee treated as a private foundation.

Section 4945(h) of the Code defines expenditure responsibility in terms of a grantor private foundation requiring proper pre-grant and post-grant reports from a grantee private foundation on the grantee's uses of a grant.

Section 53.4945-5(b)(2) of the regulations provides that expenditure responsibility includes a requirement that the grantor foundation must make a pre-grant inquiry of the prospective grantee foundation. Thus, before making a grant, the grantor foundation must conduct a limited inquiry of the potential grantee. Such pre-grant inquiry must be complete enough to give a reasonable person assurance that the grantee will use the grant for exempt purposes.

Section 53.4945-5(c)(2) of the regulations provides that, if a private foundation makes a grant to another private foundation for endowment or other capital purposes, the grantor must require reports from the grantee on the uses of the principal and the income, if any, from the grant funds. The grantee must make such reports annually for its tax year in which the grant is made and for its immediately succeeding two tax years. Only if it is reasonably apparent to the grantor, before the end of the grantee's second succeeding tax year, that neither the principal nor the income from the grant funds has been used for any purpose which would result in liability for tax under section 4945(d) of the Code, may the grantor then allow the grantee's reports to be discontinued.

Section 53.4945-5(b)(3) of the regulations provides that, in order to exercise expenditure responsibility, the grantor private foundation must require that the grantee be made subject to a signed written commitment by the grantee to repay any portion of the amount granted which is not used for the purposes of the grant, to submit complete annual reports on the manner in which the grant funds are spent and the progress made in accomplishing the purposes of the grant, to maintain records of receipts and expenditures, to make its books and records available to the grantor at reasonable times, and not to use any of the funds to carry on propaganda or otherwise attempt to influence legislation within the meaning of section 4945(d)(1), or to influence the outcome of any specific public election or to carry on directly or indirectly any voter registration drive within the meaning of section 4945(d)(2), or to make any grant which does not comply with the requirements of section 4945(d)(3) or 4945(d)(4), or to undertake any activity for any purpose other than ones specified in section 170(c)(2)(B). The agreement must clearly specify the purposes of the grant. Such purposes may include contributing for capital endowment provided that neither the grants nor the income therefrom may be used for purposes other than those described in section 170(c)(2)(B).

Section 507(b)(2) of the Code concerns the transfer of assets by one private foundation to one or more other private foundations pursuant to reorganization of the transferor. Under section 1.507-3(c)(1) of the regulations, a transfer under section 507(b)(2) includes a significant disposition of 25 percent or more of the transferor’s assets. Because Trust 1 will be in such a reorganization by its transfer of two-thirds of its assets to Trust 2 and Trust 3, Trust 1’s transfers will be transfers within section 507(b)(2).

Under section 1.507-4(b) of the regulations, Trust 1’s transfers pursuant to section 507(b)(2) of the Code will not terminate Trust 1’s treatment as a private foundation or result in any termination tax under section 507(c).

Trust 1’s transfers of two-thirds of its assets to Trust 2 and Trust 3 will not be taxable expenditures under section 4945 of the Code because Trust 1 will exercise capital endowment grant expenditure responsibility under section 4945(h) and section 53.4945-5(c)(2) of the regulations with respect to its transfers.

Trust 1’s transfers of assets will not be any act of self-dealing under section 4941 of the Code because the transfers will be grants for exempt purposes made to organizations exempt from federal income tax under section 501(c)(3), which are not disqualified persons under section 4946, for purposes of section 4941, pursuant to section 53.4946-1(a)(8) of the regulations.

Under section 53.4945-6(b)(2) of the regulations, a private foundation’s payment of reasonable costs for services rendered is not a taxable expenditure under section 4945 of the Code.

Section 4942(g)(1)(A) of the Code provides that a qualifying distribution for exempt purposes includes the reasonable and necessary administrative expenses. Thus, the legal, accounting, and other expenses, incurred by the transferor and transferees for the transfers, if reasonable in amount, will be qualifying distributions under section 4942(g)(1)(A).

Under sections 1.507-3(a)(1), (2), and (4) of the regulations, where the transferor makes transfers pursuant to section 507(b)(2) of the Code, the transferor’s aggregate tax benefits under section 507(d) will carry over to its transferees in proportion to the amount of the transferor’s assets transferred to each, subject to each transferee’s respective share of any liability which the transferor has under Chapter 42 of the Code to the extent not already satisfied by the transferor. Thus, the transferees will not be treated as newly created organizations, for purposes of sections 507, 508, and 509 of Subtitle A, Chapter 1, Subchapter F, Part II of the Code.

RULINGS

Accordingly, based on the facts and representations submitted, we conclude as follows:

1. Because the proposed transaction will not be a sale or other disposition of property, it will not cause Trust 1, the New Trusts, or any of the beneficiaries of the Trusts to realize income or gain for federal income tax purposes; the basis of each trust asset in the hands of each of the New Trusts will be the same as the basis of such asset in Trust 1, and the holding period of each trust asset in the hands of the New Trusts will include the holding period of such asset in Trust 1.

2. Based on the analysis and conditions set forth above, Trust 1 and the New Trusts will be treated as separate trusts for federal income tax purposes under section 643(f).

3. None of the beneficiaries of the Trusts will be treated as owning any portion of the Trusts pursuant to sections 673 through 678 of the Code.

4. The proposed transaction will not result in the imposition of gift tax or result in a transfer that will cause any part of Trust 1 or the New Trusts to be includible in any beneficiary’s estate for estate tax purposes pursuant to sections 2035 through 2038 of the Code.

5. Trust 1's transfer of two-thirds of its assets to Trust 2 and Trust 3 will not terminate Trust 1's status as a trust described in, and subject to the private foundation provisions of, section 4947(a)(2) of the Code, and will not result in tax under section 507(c).

6. Trust 1's transfer will not be a taxable expenditure under section 4945 of the Code because Trust 1 will exercise capital endowment grant expenditure responsibility under section 4945(h) of the Code and section 53.4945-5(c)(2) of the regulations as to its transfers.

7. Trust 1's transactions as described will not be any act of self-dealing under section 4941 of the Code, as to transferor Trust 1, transferees Trust 2 and Trust 3, or any of their disqualified persons under section 4946.

8. The legal, accounting, and other expenditures, incurred by transferor Trust 1 and its transferees, Trust 2 and Trust 3, to effect this proposed transaction, if reasonable in amount, will not be taxable expenditures under section 4945 of the Code, and will be qualifying distributions under section 4942.

9. Under sections 1.507-3(a)(1), (2), and (4) of the regulations, transferor Trust 1's aggregate tax benefits will carry over to its transferees, Trust 2 and Trust 3, in proportion to the amount of the transferor's assets transferred to each, subject to each transferee's respective share of any liability which the transferor has under Chapter 42 of the Code to the extent not already satisfied by the transferor. The transferees will not be treated as newly created organizations, for purposes of sections 507, 508, and 509 of the Code.

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

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

Pursuant to a power of attorney on file with this office, copies of this ruling are being sent to Trust 1's authorized representatives.

A copy of this ruling should be attached to the tax returns filed for Trust 1, Trust 2, and Trust 3 for the taxable year in which the proposed transaction is carried out.

Sincerely yours,

J. THOMAS HINES
Senior Technician Reviewer
Branch 2
Office of the Assistant
Chief Counsel
(Passthroughs and Special
Industries)

Enclosures: 2
Copy of this letter
Copy for 6110 purposes