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Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:4-PLR-128952-01

Date:

June 25, 2001

Re:

LEGEND

Taxpayer =  
Trust =  
A =  
Date =  
\$x =  
Foundation =  
Charity =  
Foundation Bylaws =

Dear :

This is in response to your June 6, 2001 letter and other correspondence requesting rulings under §§ 2522, 2033, 2035, 2036 and 2038 of the Internal Revenue Code. The facts and representations submitted are as follows.

Taxpayer created an irrevocable trust (Trust) on Date and transferred publicly traded stock to it. A is designated as trustee.

Under Article First, subsection (B) of Trust, an amount equal to 8 percent of the fair market value of the initial value of the trust property, or \$x, is to be paid in quarterly installments on or about the last day of March, June, September, and December of each taxable year. In a taxable year of less than twelve months, including the year in which Trust terminates, the annuity amount is to be determined by multiplying the full annuity amount by a fraction based on the number of days in the short taxable year and the number of days in the taxable year. Under Article First, subsection (D), no additional contributions may be made to Trust.

Under Article First, subsection (E), the annuity is to be paid to Foundation, a charitable organization described in §§ 170(b)(1), 170(c), 2055(a) and 2522(a). If, at the time of distribution, Foundation is not an organization described in those sections,

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the trustee is to distribute the annuity to Charity, which is a charitable organization described in those sections. If Charity is not such an organization at the time of distribution, the trustee is to distribute the annuity to such charitable organizations which are described in those sections as the trustee selects in his sole discretion.

Under Article First, subsections (G)(1) and (2), Trust will terminate ten years after the date of contribution under the trust agreement. On termination, the trustee will pay the remaining principal (other than any amount distributable to the charity) to certain descendants or to trusts for them. Under subsection (G)(3)(d), any such trust must terminate no later than 21 years after the death of the last to die of Taxpayer and Taxpayer's children and grandchildren living on the date of execution of Trust.

Under Article First, subsection (I), no payments may be made during the 10-year annuity term for any private purpose or to any person other than the charity.

Under Article Third, subsection (C), any trustee serving as a trustee of the charitable trust or a subsequent trust may appoint an individual, individuals, or a bank or trust company as co-trustee or successor trustee. Taxpayer and/or her spouse may never be appointed as a trustee or co-trustee of Trust or any successor trust. At any given time, there must be at least one trustee but not more than three trustees. No more than one corporate trustee may serve at any one time. Under Article Third, subsection (D), in the event of the resignation of a sole trustee, if no successor trustee is appointed under subsection (C), then a majority in interest of the remainderpersons (or their guardians) are to appoint a successor trustee.

Under Article Fifth, subsection (B), the trustee is prohibited from engaging in any act of self-dealing as defined in § 4941(d), from investing in or retaining any excess business holdings as defined in § 4943(c) which would subject Trust to tax under § 4943, from making any investments that would subject the Trust to tax under § 4944, and from making any taxable expenditures as defined in § 4945(d). The trustee is to make distributions at such times and in such manner as not to subject Trust to tax under § 4942.

### Foundation

Under Article III.1. of the Foundation Bylaws, the number of directors is to be no less than 3 and no more than 15. Under Article III.2., Taxpayer will hold the office of Director for her lifetime or until she resigns or is removed. Otherwise, each director will hold office for one year and until his or her successor is duly elected and qualifies.

Under Article III.6., any vacancy in the Board of Directors may be filled by a majority vote of the remaining directors or by the sole remaining director. However, Taxpayer may not cast a vote for or appoint an individual as a director that is either

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related or subordinate to her within the meaning of § 672(c).

Under Article VII.1., the Board of Directors may appoint from its number, or from among such persons as the Board may see fit, one or more advisory committees, and at any time may appoint additional members thereto. However, Taxpayer may not be appointed to the advisory committee.

Under Article X.1., at any time Foundation is a beneficiary of a charitable lead trust, a charitable remainder trust or other similar trust, and the charitable trust was established by a director, officer or substantial contributor to Foundation, the director, officer or substantial contributor establishing the charitable trust is prohibited from acting on matters concerning funds coming to Foundation from the charitable trust.

Under Article X.2., a director, officer, or substantial contributor who establishes a charitable trust for the benefit of Foundation may not be counted when establishing a quorum to vote on matters relating to those funds. The director, officer, or substantial contributor will be prohibited from voting on any matters relating to the funds received or anticipated to be received from the charitable trust, including voting on any disbursements or grants of such funds.

Under Article X.3., any funds received from a charitable trust are to be segregated into a separate account in the Foundation's books in such a manner as to allow tracing of the funds into and out of that account. The separate account will be administered and distributed by a separate fund committee and Taxpayer may not possess any power over this account or this separate fund committee.

Under Article XIV, no director, officer, employee, agent, or member of any committee of Foundation may take any action or carry on any activity by or on behalf of Foundation that (a) is not permitted to be taken or carried on by an organization exempt from income tax as a § 501(c)(3) entity, or (b) would jeopardize the deductibility of contributions to Foundation under §§ 170(c)(2), 2055(a)(2), or 2522(a)(2).

Under Article XV, the restrictions and provisions contained in Article X may not be altered, amended or repealed.

You have asked us to rule as follows:

(1) The trust is a charitable lead annuity trust, the funding of which was a completed gift for federal gift tax purposes. Taxpayer is entitled to a gift tax deduction under § 2522 based on the present value of the annuity, determined in accordance with § 25.2512-5.

(2) On Taxpayer's death, no portion of the principal of the Trust will be included in her gross estate under §§ 2033, 2035, 2036 or 2038.

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RULING REQUEST 1:

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

Section 2511 provides that the gift tax shall apply whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible.

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

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

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

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

Section 25.2522(c)-3(c)(2)(vi)(a) provides that the term "guaranteed annuity interest" means an irrevocable right pursuant to the instrument of transfer to receive a guaranteed annuity. A guaranteed annuity is an arrangement under which a determinable amount is paid periodically, but not less often than annually, for a specified term of years, or for the life or lives of certain individuals.

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

In this case, for purposes of § 25.2511-2(b), Taxpayer has not retained a power over the property transferred to Trust, and she has not retained an interest, reversion,

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or right to alter, amend or revoke Trust. Taxpayer may not serve as a trustee of Trust. Although she is one of the directors of Foundation, she is not permitted to vote on matters relating to disbursements or grants of funds received from Trust. Any funds received by Foundation from the Trust will be segregated into a separate account. The separate account will be administered and distributed by a separate committee and Taxpayer will have no power over the account or the separate fund committee. In addition, the annuity payable under the Trust satisfies the requirements of § 25.2522(c)-3(c)(2)(vi) and is, therefore, a guaranteed annuity for purposes of § 2522(c).

Accordingly, we conclude that Taxpayer's transfer to Trust is a completed gift for federal gift tax purposes. Taxpayer is entitled to a gift tax deduction under § 2522, based on the present value of the guaranteed annuity payable to charity determined in accordance with § 25.2512-5.

#### RULING REQUEST 2:

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

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

Section 2035(a) provides that if the decedent transferred an interest in property or relinquished a power with respect to any property, during the 3-year period ending on the date of the decedent's death, and the value of the property (or interest therein) would have been included in the gross estate under § 2036, 2037, 2038, or 2042 if the interest or power had been retained by the decedent on the date of death, then the value of the gross estate shall include the value of any property (or interest therein) which would have been so included.

Section 2036(a) provides that the value of the gross estate includes the value of all property to the extent of any interest therein of which the decedent has made a transfer (except in the case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, under which the decedent has retained for life the possession or enjoyment of, or the right to the income from the property, or the right to designate the persons who shall possess or enjoy the property or the income from the property.

Section 2038(a) provides that the value of the gross estate includes the value of all property to the extent of any interest therein of which the decedent has made a transfer (except in the case of a bona fide sale for adequate and full consideration in money or money's worth), by trust or otherwise, where the enjoyment thereof was subject at the date of death to any change through the exercise of a power by the decedent to alter, amend, revoke, or terminate the interest in the property or where the

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decedent relinquished such power within the three-year period ending on the date of the decedent's death.

In this case, Taxpayer created a charitable lead annuity trust under which a fixed amount is distributed annually from Trust to a qualified charitable organization for a term of years. At the end of the term of years, the remaining Trust property will be paid to Taxpayer's children or their issue outright or in trust. Further, Taxpayer cannot serve as a trustee of Trust or any successor trust, and she cannot participate in any vote of the Foundation Board of Directors or officers concerning the annuity funds received from Trust. Thus, Taxpayer retains no interest or reversion in Trust and no right to alter, amend, or revoke Trust.

Accordingly, based on the facts submitted and the representations made, no portion of the Trust property will be included in Taxpayer's gross estate.

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

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

Sincerely yours,  
James F. Hogan  
Assistant to the Branch Chief, Branch 4  
Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosure  
copy for § 6110 purposes