

Internal Revenue Service

Number: **200536013**

Release Date: 9/9/2005

Index Number: 642.03-00, 671.03-00,
2522.02-04

Department of the Treasury
Washington, DC 20224

[Third Party Communication:
Date of Communication: Month DD, YYYY]

Person To Contact: _____, ID No.

Telephone Number: _____

Refer Reply To:
CC:PSI:B04
PLR-158355-04

Date:
May 25, 2005

Re:

Legend:

- Settlor -
- A -
- B -
- C -
- D -
- Trust -
- Foundation 1 -
- Foundation 2 -
- University -
- State -
- X% -
- Y -

Dear _____ :

This is in response to your authorized representative's submission dated October 5, 2004, in which rulings were requested concerning the establishment and operation of a proposed charitable lead trust.

According to the facts submitted and representations made, Settlor proposes to create Trust, an irrevocable trust, for the benefit of Settlor's children, A, B, and C, as well as certain charitable organizations. The initial trustees of Trust will be A, C, and D. D is not related to Settlor.

Paragraph (W) of Article FIRST provides that no power enumerated in the trust agreement or accorded to the trustees generally pursuant to law shall be construed to enable Grantor (or any spouse of Grantor), the trustees, or any other person to purchase, exchange, or otherwise deal with or dispose of all or part of the principal or

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income of Trust for less than an adequate consideration in money or money's worth, or to enable Grantor (or any spouse of Grantor) to borrow all or any part of the principal or income of Trust, directly or indirectly; no person other than the trustees acting in a fiduciary capacity shall have or exercise the power to vote or direct or authorize voting of any shares or other securities of Trust, to control the investments of Trust either by directing investments or reinvestments or by vetoing proposed investments or reinvestments or to reacquire or exchange any property of Trust by substituting other property of any equivalent value; and the trustees shall not pay premiums on (or purchase) any policy of insurance on the life of Grantor (or the life of Grantor's spouse).

Paragraph (X) of Article FIRST prohibits the trustees from engaging in any act of self-dealing as defined in § 4941(d), from causing Trust to have excess business holdings as defined in § 4343(c), from causing an investment to be acquired or retained in a manner that subjects Trust to tax under § 4944, and from making any taxable expenditures as defined in § 4945(d).

Article SECOND, Paragraph (A)(1) provides that until the expiration of a period of y years from the date of execution of the trust indenture (the "Termination Date"), the trustees shall distribute annually (in cash or in kind, valued at the date of distribution, or partly in each, in the trustees' sole discretion) to such one or more Qualified Charities as may be selected by the trustees, an annuity amount equal to x% of the value of all assets contributed to the trust on the date of execution (annuity amount). Distributions shall be made in such portions as determined by the trustees. Said annuity amount shall commence on and accrue from the date of execution of the trust indenture and may, in the trustees' discretion, be paid in convenient installments not less frequently than annually. In the event the trust indenture is executed on such a day that the first fiscal year of the trust shall not be a full year, said amount distributable for the first year (or last year) shall be determined as a pro rata portion of the annuity amount, taking into account the number of days remaining in said first year (or last year) using the date of execution of the trust indenture as the first of such days remaining (or the Termination Date as the last day remaining).

Paragraph (A)(1) of Article SECOND also provides that the annuity amount shall be paid from current income, and to the extent that current income shall be insufficient, from accumulated income, and to the extent accumulated income shall be insufficient, from principal (including capital gains). In satisfying the annuity amount from current or accumulated income, the amount of income distributed to the Qualified Charities shall be treated as consisting of the same proportion of each class of the items of income of Trust as the total of each class bears to the total of all classes. Any income not so distributed may be added currently to principal in the Trustee's sole discretion.

Paragraph (A)(2) of Article SECOND provides that if, on or before fifteen days prior to the close of any year, the trustees have not selected one or more Qualified Charities to receive all or any portion of the annuity amount for that year, then such

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undesignated portion shall be paid to Foundation 1, Foundation 2 and University (Named Charities) or their successor(s), as shall then be a Qualified Charity.

Paragraph (A)(3) of Article SECOND provides that the term "Qualified Charities" shall mean and include only such organizations as are described (at the time of determination) in §§ 170(c) and 2522(a), gifts to which qualify for the charitable deduction under both the federal gift tax and federal income tax laws.

Paragraph (A)(4) of Article SECOND provides that the annuity interest shall not be commuted or prepaid prior to the Termination Date.

Paragraph (B) of Article SECOND provides that on the Termination Date, the trustees shall distribute the remaining Trust assets in equal shares to each of Settlor's children, and his or her respective heirs, personal representatives, and administrators.

Under Article THIRD, Paragraph (A), any trustee of Trust may resign without need to obtain an order from any court by written instrument delivered to a co-trustee or successor trustee, and thereupon he or she will stand discharged from further performance on any duties as trustee.

Paragraph (D) of Article THIRD provides that, upon the death of Settlor, B will become a co-trustee. Children of Settlor who are also serving as co-trustees are not entitled to compensation for services performed as co-trustees. Paragraph (E) provides that individuals and corporations who are unrelated to Settlor are entitled to compensation in accordance with the corporations' published schedule of fees in effect at the time the service is rendered. Paragraph (L) prohibits Settlor or any spouse of Settlor from serving as trustee or co-trustee of Trust.

Article FIFTH provides that Trust shall be irrevocable. Settlor expressly acknowledges that she will have no right or power, whether alone or in conjunction with others, or in whatever capacity, to alter, amend, revoke or terminate Trust or any terms thereof, in whole or in part, or to designate the persons who shall possess or enjoy the trust property or the income therefrom during the continuance of the Trust.

Article SIXTH provides that Trust is executed under the laws of State, and its validity and construction, and the rights of all parties in interest, shall be determined under State law.

You have requested the following rulings:

1. The annuity interest in Trust will be a guaranteed annuity interest within the meaning of § 2522(c)(2)(B) and § 25.2522(c)-3(2)(vi) and that a gift tax deduction will be allowed to Settlor pursuant to § 2522 equal to the value of the guaranteed annuity.

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2. Trust will be allowed a deduction under § 642(c) each taxable year in an amount equal to the annuity amount paid from Trust's gross income during such taxable year in accordance with Trust's terms.
3. No portion of Trust's income will be taxable to Settlor under §§ 671 through 678.

Gift Tax Ruling

Section 2501(a)(1) of the Internal Revenue Code provides that a tax, computed as provided in § 2502, is imposed for each calendar year on the transfer of property by gift during such calendar year by any individual, resident or nonresident.

Section 2511(a) provides that, generally, the gift tax imposed by § 2501 will 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 2512(a) provides that, if a gift is made in property, the value thereof at the date of the gift shall be considered the amount of the gift. Section 2512(b) provides that where property is transferred for less than an adequate and full consideration in money or money's worth, the amount by which the value of the property exceeded the value of the consideration shall be deemed a gift.

Section 2522(a)(2) provides that in computing taxable gifts for the calendar year, there shall be allowed as a deduction in the case of a citizen or resident 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, which is not disqualified for tax exemption under § 501(c)(3) by reason of attempting to influence legislation, and which does not participate in or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

Section 2522(c)(2)(B) provides that where a donor transfers an interest in property (other than an interest described in § 170(f)(3)(B)) to a person, or for a use, described in § 2522(a) or (b) 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 § 2522(a) or (b), no deduction shall be allowed under § 2522 for the interest which is, or has been transferred to the person, or for the use described in § 2522(a) or (b), unless, in the case of an interest that is not a remainder interest, such

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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) of the Gift Tax Regulations provides that a charitable interest in property is a deductible interest where the charitable interest is a guaranteed annuity interest. The term “guaranteed annuity interest” means an irrevocable right pursuant to the instrument of transfer to receive a guaranteed annuity. A guaranteed annuity is an arrangement under which a determinable amount is paid periodically, but not less often than annually, for a specified term of years or for the life or lives of certain individuals, each of whom must be living at the date of the gift and can be ascertained at such date. An amount is determinable if the exact amount which must be paid under the conditions specified in the instrument of transfer can be ascertained as of the date of gift.

Section 25.2522(c)-3(c)(2)(vi)(e) provides that where a charitable interest in the form of a guaranteed annuity interest is in trust, and the present value on the date of the gift of all income interests for a charitable purpose exceeds 60 percent of the aggregate fair market value of all amounts in the trust (after payment of liabilities), the charitable interest will not be a guaranteed annuity interest unless the governing instrument prohibits both the acquisition and retention of assets which could give rise to a tax under § 4944 if the trust acquired such assets.

In the present case, based on the information submitted and representations made, the annuity payable under the terms of Trust satisfies the requirements of § 25.2522(c)-3(c)(2)(vi)(a). Therefore, the annuity will be a guaranteed annuity for purposes of § 2522(c)(2)(B) and the corresponding regulations. Accordingly, Settlor will be entitled to a gift tax charitable deduction under § 2522 equal to the present value of the guaranteed annuity interest, valued as of the date property is transferred to Trust.

Income Tax Rulings

Section 642(c)(1) provides that in the case of an estate or trust (other than a trust meeting the specifications of subpart B), there shall be allowed as a deduction in computing its taxable income (in lieu of the deduction allowed by § 170(a), relating to deduction for charitable, etc., contributions and gifts) any amount of the gross income, without limitation, which pursuant to the terms of the governing instrument is during the taxable year, paid for a purpose specified in § 170(c) (determined without regard to § 170(c)(2)(A)). Section 642(c)(4) provides that the deduction allowed for a trust is subject to § 681 (related to unrelated business income).

Section 681 provides that no charitable deduction is allowed to a trust under § 642(c) for any amount allocable to the trust’s “unrelated business income” for the taxable year. The term “unrelated business income” means an amount under § 512, if

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the trust were exempt from tax under § 501(a) by reason of § 501(c)(3), that would be computed as its unrelated business taxable income under § 512.

Except to the extent that Trust has unrelated business income under § 681(a), and except to the extent that contributions are nondeductible under § 508(d) and § 4948(c), Trust will be allowed deductions in accordance with § 642(c)(1) for amounts of gross income paid to the Named Charities and Qualified Charities during that taxable year, or before the close of the following year, if the trustee make an election under § 1.642(c)-1(b) of the Income Tax Regulations. Because the deduction under § 642(c)(1) is limited to amounts of gross income, no deduction will be allowed for a distribution of principal except to the extent the amount distributed has been included in the gross income of the trust and provided no deduction was allowed for any previous year for the amount distributed.

Section 671 provides that where it is specified in subpart E of Part I of subchapter J that the grantor or another person shall be treated as the owner of any portion of a trust, there shall then be included in computing the taxable income and credits of the grantor or the other person those items of income, deductions, and credits against tax of the trust that are attributable to that portion of the trust to the extent that such items would be taken into account under chapter 1 in computing taxable income or credits against the tax of an individual.

Sections 673 through 678 specify the circumstances under which the grantor or a person other than the grantor is treated as the owner of a portion of a trust.

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

Section 674(a) provides, in general, that the grantor shall be treated as the owner of any portion of a trust in respect of which the beneficial enjoyment of the corpus or the income therefrom is subject to a power of disposition, exercisable by the grantor or a nonadverse party, or both, without the approval or consent of an adverse party. Section 674(b)(4) provides that § 674(a) shall not apply to a power to determine the beneficial enjoyment of the corpus or the income therefrom if the corpus or income is irrevocably payable for a purpose specified in § 170(c) (relating to the definition of charitable contributions).

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

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

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

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

Based solely on the facts and representations submitted, we conclude that an examination of Trust reveals none of the circumstances that would cause Settlor or any other person to be treated as the owner of any portion of Trust under §§ 673, 674, 676, 677, or 678.

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

Except as specifically set forth above, we express no opinion as to the federal tax consequences of the transaction described above under the cited provisions of the Code or under any other provisions of the Code. In particular, we express no opinion as to whether or not the Named Charities are described in §§ 170(b)(1)(A), 170(c)(2)(B), 2055(a), and 2522(a) of the Code, and we express no opinion regarding the value of the property contributed to Trust.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by the appropriate party. While this office has not verified any of

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the material submitted in support of the request for rulings, it is subject to verification and examination.

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

Sincerely,

Katherine A. Mellody
Senior Technician Reviewer, Branch 4
(Office of Passthroughs and Special Industries)

Enclosure

Copy for section 6110 purposes

cc: