

Internal Revenue Service

Department of the Treasury

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170.00-00

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B09-PLR-137126-03

Date:

October 21, 2003

Re: Private Letter Ruling Request

LEGEND

Taxpayer =
State =
Date 1 =
Trustee =
Trust Agreement =
\$x =
Family Foundation =
Date 2 =
Date 3 =

Dear :

This is in response to your authorized representative's letter dated May 15, 2003, and subsequent correspondence, requesting gift, estate and income tax rulings under the applicable provisions of the Internal Revenue Code (the "Code"). The facts and representations submitted are as follows:

Taxpayer is a resident of State. On Date 1, Taxpayer and Trustee entered into Trust Agreement. Trustee is not related to Taxpayer by blood or marriage.

Under the terms of Trust Agreement, Taxpayer established four irrevocable trusts referred to collectively as the "Charitable Lead Trusts." Concurrently with the signing of Trust Agreement on Date 1, Taxpayer funded each Charitable Lead Trust created under Trust Agreement with \$x.

Paragraph 1.01 of Trust Agreement provides, in part, that any property transferred to Trustee and held under Trust Agreement shall be allocated equally

among each of the four Charitable Lead Trusts. In addition, each of the four Charitable Lead Trusts shall bear the name of one of the children of Taxpayer followed by the term "Charitable Lead Trust." With respect to each Charitable Lead Trust, the child of Taxpayer for whom that trust is named shall be the beneficiary and the Special Trustee of such trust.

Paragraph 1.03 provides that after the initial funding, no additional contributions may be made to any of the Charitable Lead Trusts.

Paragraph 2.01 provides that the charitable term of each trust shall begin on Date 1 and end twenty-one years after that date.

Paragraph 2.02 provides that except as provided in Paragraph 2.04, in each taxable year during the charitable term Trustee shall pay from each of the four Charitable Lead Trusts to one or more charitable organizations an annuity amount equal to seventy thousand dollars (\$70,000), for a total of two hundred eighty thousand dollars (\$280,000) from all four Charitable Lead Trusts. Regardless of any provision of state law or any provisions of Trust Agreement to the contrary, during the charitable term Trustee may not exercise any power to invade principal or income for any persons other than a charitable organization.

Paragraph 2.02.1 provides that the obligation to pay the annuity amount shall begin on Date 1.

Paragraph 2.03 provides that the annuity amount payable from each Charitable Lead Trust shall be paid in equal installments at the end of each quarter (on the last day of March, June, September, and December) first from the ordinary taxable income (including short-term capital gains) which is not unrelated business income (as defined in § 681(a)), then from fifty percent of the unrelated business income, then from the long-term capital gains, then from the balance of the unrelated business income, then from the tax-exempt income, then from any accumulated income, and finally from the principal, in that order. Any net income for a taxable year in excess of the annuity amount shall be added to principal.

Paragraph 2.05 provides that prior to each child of Taxpayer attaining the age of twenty-one years, the annuity amount attributable to each Charitable Lead Trust shall be paid to Family Foundation. Upon each child attaining the age of twenty-one years or if a child is twenty-one years of age on Date 1, ninety percent of the annuity amount of such child's Charitable Lead Trust shall be paid to Family Foundation and the remaining ten percent of the annuity amount shall be paid in accordance with Paragraph 2.06. If during the charitable term Family Foundation is not an organization described in §§ 170(c) and 2522(a), the amount that would have been paid to Family Foundation shall instead be paid to one or more organizations described in §§ 170(c) and 2522(a), in the sole discretion of Trustee. Notwithstanding the foregoing, no distribution of any part of the annuity amount may be made to a charitable organization

of which Taxpayer is a director at the time of the distribution, and Taxpayer irrevocably agrees to not become a director of any charitable organization that has at any time received a distribution of any part of the annuity amount.

Paragraph 2.06 provides that upon each child of Taxpayer attaining the age of twenty-one years or if a child is twenty-one years of age on Date 1, such child shall become a Special Trustee of his or her trust and shall instruct Trustee to distribute ten percent of the annuity amount to one or more charitable organizations described in §§ 170(c) and 2522(a) as the child shall select, in the exercise of absolute discretion. If one of Taxpayer's children dies or ceases to act in his or her capacity as Special Trustee, one hundred percent of the annuity amount from the Charitable Lead Trust named for that child shall be paid to Family Foundation.

Paragraph 3.01 provides that upon the termination of the charitable term of each Charitable Lead Trust, Trustee shall distribute all of the income accrued during the charitable term to the charitable organizations described in Paragraphs 2.05 and 2.06.

Paragraph 4.01.1(b) provides that after both the expiration of the charitable term and the payment of all the annuity amount to the charitable beneficiary or beneficiaries, the trustee shall distribute the balance of each Charitable Lead Trust outright to the child for whom such trust is named. If the child for whom a Charitable Lead Trust is named is not then living and is not survived by descendants then living, then the deceased child's trust shall be divided into equal shares and one equal share shall be allocated to each of Taxpayer's then living children and distributed outright. If at the termination of the charitable term a child for whom a Charitable Lead Trust is named is not then living but is survived by descendants then living, the deceased child's trust shall be allocated to the living descendants of that deceased child and shall be apportioned into partial shares among those living descendants upon the principle of representation. Each Charitable Lead Trust allocated for the living descendants of a deceased child shall be held in separate trust for those descendants.

Paragraph 5 sets forth the powers of the trustee and provides, in part, that regardless of any other provision of Trust Agreement, Trustee shall take no action regarding any of the Charitable Lead Trusts that would (i) violate the requirements of § 2522(c)(2)(B); (ii) prevent the annuity amount from being deductible from the gross income of each Charitable Lead Trust to the extent allowed by § 642(c); or (iii) violate the provisions of Paragraph 6.02.

Paragraph 6.01 provides that in entering into Trust Agreement, Taxpayer intends (i) to obtain the full benefit of any gift tax charitable deduction to which Taxpayer may be entitled under the Code; (ii) for the annuity amount to qualify as a guaranteed annuity interest under § 2522(c)(2)(B); (iii) for the Charitable Lead Trusts to not be deemed "grantor trusts" with respect to Taxpayer; (iv) for the trust estates of the Charitable Lead Trusts not to be included in the estate of Taxpayer; and (v) for the annuity amount distributions to a charitable organization to be deductible from the gross income of each Charitable Lead Trust to the extent allowed by § 642(c).

Paragraph 6.02 provides that in accordance with §§ 508(e) and 4947(a)(2), Trustee is prohibited from engaging in certain activities.

Paragraph 6.02.1, entitled “Self-Dealing,” provides that Trustee is prohibited from engaging in any act of self-dealing as defined in § 4941(d).

Paragraph 6.02.2, entitled “Excess Business Holdings,” provides that except to the extent provided in § 4947(b)(3)(A) (regarding the charitable deduction not exceeding 60 percent of the aggregate fair market value of the Charitable Lead Trusts), Trustee is prohibited from retaining any excess business holdings as defined in § 4943(c) that would subject the Charitable Lead Trusts to tax under § 4943.

Paragraph 6.02.3, entitled “Jeopardy Investments,” provides that except to the extent provided in § 4947(b)(3)(A) (regarding the charitable deduction not exceeding 60 percent of the aggregate fair market value of the Charitable Lead Trusts), Trustee is prohibited from acquiring, retaining, or both acquiring and retaining assets that jeopardize the carrying out of the charitable purposes of the Charitable Lead Trusts and would subject the Charitable Lead Trusts to tax under § 4944.

Paragraph 6.02.4, entitled “Taxable Expenditures,” provides that Trustee may not make any taxable expenditures as defined in § 4945(d).

Paragraph 6.02.5, entitled “Distribution of Income,” provides that if § 4942 is at any time deemed applicable to the Charitable Lead Trusts, Trustee shall make distributions at the time and in the manner as not to subject the Charitable Lead Trusts to tax under § 4942.

Paragraph 6.03 provides that it is Taxpayer’s intent that the Charitable Lead Trusts created under Trust Agreement shall not be taxed as “grantor trusts” under § 671 and that the provisions of Paragraph 6.03 shall control any contradictory provisions.

Paragraph 6.03.1, entitled “No Reversion - Section 673,” provides that despite any other trust provision to the contrary, Taxpayer shall have no interest in the income or principal of any Charitable Lead Trust and Trustee is prohibited from making a distribution of principal or income to Taxpayer as described in § 673.

Paragraph 6.03.2, entitled “Power of Disposition - Section 674,” provides that despite any other trust provision to the contrary, neither Taxpayer nor any person classified as a nonadverse party under § 672 shall have any power to determine beneficial enjoyment of the principal or income in any manner that would cause any part of the income or principal of any Charitable Lead Trust to be considered a “grantor trust” under § 674.

Paragraph 6.03.3, entitled "Power to Deal With Trust Assets - Section 675," provides that despite any other trust provision to the contrary, neither Taxpayer nor any other person shall have the power (i) to dispose of the income or principal of any Charitable Lead Trust for less than an adequate consideration in money or money's worth; (ii) to borrow principal or income of any Charitable Lead Trust, directly or indirectly, without adequate interest or security; or (iii) to borrow, directly or indirectly, the principal or income of any Charitable Lead Trust. In addition, neither Taxpayer nor any other person shall have a power of administration exercisable in a nonfiduciary capacity without the approval or consent of any person in a fiduciary capacity.

Paragraph 6.03.4, entitled "Power to Revoke - Section 676," provides that despite any other trust provision to the contrary, neither Trustee nor any other person shall have the power to revest any income or principal of any Charitable Lead Trust in Taxpayer.

Paragraph 6.03.5, entitled "Distribution of Income - Section 677," provides that despite any other trust provision to the contrary, no income of any Charitable Lead Trust may be distributed to Taxpayer or Taxpayer's spouse, held for future distribution to Taxpayer or Taxpayer's spouse, or applied to the payment of premiums on a policy of insurance on the life of Taxpayer or Taxpayer's spouse.

Paragraph 6.03.6, entitled "Distribution of Income - Section 678," provides that despite any other trust provision to the contrary, no person may become vested of a power over income or principal of any Charitable Lead Trust to vest the principal or income of any Charitable Lead trust in himself.

Paragraph 6.04 provides that it is Taxpayer's intent that no part of the Charitable Lead Trusts be included in Taxpayer's gross estate under § 2033.

Paragraph 6.04.1, entitled "Three-Year Rule - Section 2035," provides that despite any other trust provision to the contrary, Taxpayer shall have no interest in the income or principal of the Charitable Lead Trusts, and Trustee is prohibited from making a distribution of principal or income to Taxpayer.

Paragraph 6.04.2, entitled "Income of the Trust - Section 2036," provides that despite any other trust provision to the contrary, Taxpayer shall have no power to designate the persons who shall enjoy the principal or income of the Charitable Lead Trusts nor shall Taxpayer have any right to income or to possess or enjoy the assets of the Charitable Lead Trusts.

Paragraph 6.04.3, entitled "Reversion - Section 2037," provides that despite any other trust provision to the contrary, no part of the trust estate of any of the Charitable Lead Trusts may revert to Taxpayer.

Paragraph 6.04.4, entitled “Power to Revoke - Section 2038,” provides that despite any other trust provision to the contrary, Taxpayer shall not have the power to alter, amend, revoke, or terminate the Charitable Lead Trusts.

Paragraph 6.04.5, entitled “Power of Appointment - Section 2041,” provides that despite any other trust provision to the contrary, Taxpayer shall not have the right to appoint any property transferred to a Charitable Lead Trust nor may Taxpayer be granted a power to appoint property transferred to the Charitable Lead Trusts.

Paragraph 6.04.6, entitled “No Purchase of Life Insurance - Section 2042,” provides that despite any other trust provision to the contrary, Trustee may not purchase any life insurance on the life of Taxpayer, Taxpayer’s spouse, or both of their lives.

Paragraph 7.01 provides that during the charitable term no amount, other than an amount transferred for full and adequate consideration, may be paid to or for the use of any person other than an organization described in each of § 170(b)(1)(A) or § 170(c), § 2055(a), and § 2522(a).

Paragraph 7.02 provides that no gift or estate tax that may be assessed against the trust estate of each Charitable Lead Trust by reason of either Taxpayer’s transfer of assets to each Charitable Lead Trust or Taxpayer’s death shall be paid out of the trust estate of that Charitable Lead Trust.

Paragraph 7.03 provides that Trustee shall not make any payments to Taxpayer nor shall Taxpayer have any rights to designate any beneficiary under Trust Agreement, and Taxpayer shall not have any power and Trustee shall not grant any power to Taxpayer or any other person that would cause any Charitable Lead Trust to be a grantor trust with respect to Taxpayer under §§ 671 through 679. This provision may be enforced by a charitable organization.

Paragraph 8.01 provides that Trustee shall have the power to amend Trust Agreement in any manner required for the purposes of (i) complying with the requirements of § 2522(c)(2)(B); (ii) qualifying any Charitable Lead Trust for the income tax deduction under § 642(c); and (iii) avoiding the imposition of any private foundation excise tax under §§ 4941 through 4947. Any amendment shall be implemented by a written document signed only by Trustee; Taxpayer’s signature shall be neither required nor permitted.

Paragraph 8.02 provides that, except as provided in Paragraph 8.01, Trust Agreement is irrevocable and may not be altered, amended, or revoked.

Paragraph 9.06.1 provides that despite any other provision to the contrary, Taxpayer may never act as a trustee or co-trustee of the Charitable Lead Trusts, and

that Taxpayer shall have no rights (as a trustee or otherwise) to designate a charitable organization to receive part or all of the annuity amount or to designate any other beneficiaries of any Charitable Lead Trust.

Pursuant to a determination letter issued by the Internal Revenue Service on Date 2, Family Foundation is exempt from income tax under § 501(a) as an organization described in § 501(c)(3). The directors of Family Foundation are Taxpayer's four children.

Section 3.01 of Family Foundation's bylaws, as amended on Date 3, provides that Family Foundation is organized exclusively for charitable purposes within the meaning of § 501(c)(3). The bylaws further provide that Family Foundation shall not engage in any activities or exercise any powers that are not in furtherance of the purposes of the corporation, and that the corporation shall not carry on any other activities not permitted to be carried on by a corporation exempt from federal income tax under § 501(c)(3), or by a corporation contributions to which are deductible under § 170(c)(2).

Section 5.02.3 of the bylaws provides that Taxpayer may not act at any time as a director of the corporation.

Taxpayer requests the following rulings:

1. The annuity amount paid from each Charitable Lead Trust will qualify under § 2522(c)(2)(B) as a guaranteed annuity.
2. Taxpayer will be entitled to a gift tax charitable deduction under § 2522(a) for the value of the annuity amount (valued under §§ 2502 and 7520) to be paid to the charitable organization(s) during the charitable term.
3. No part of the assets transferred to the Charitable Lead Trusts will be included in Taxpayer's gross estate under § 2036.
4. No part of the assets transferred to the Charitable Lead Trusts will be included in Taxpayer's gross estate under § 2037.
5. No part of the assets transferred to the Charitable Lead Trusts will be included in Taxpayer's gross estate under § 2038.
6. No part of the assets transferred to the Charitable Lead Trusts will be included in Taxpayer's gross estate under § 2041.
7. No part of the assets transferred to the Charitable Lead Trusts will be included in Taxpayer's gross estate under § 2042.
8. No part of the assets transferred to the Charitable Lead Trusts will be included in Taxpayer's gross estate under § 2035.

9. No part of the income or principal transferred to the Charitable Lead Trusts will be owned by Taxpayer under § 671 due to the application of § 673.
10. No part of the income or principal transferred to the Charitable Lead Trusts will be owned by Taxpayer under § 671 due to the application of § 674.
11. No part of the income or principal transferred to the Charitable Lead Trusts will be owned by Taxpayer under § 671 due to the application of § 675.
12. No part of the income or principal transferred to the Charitable Lead Trusts will be owned by Taxpayer under § 671 due to the application of § 676.
13. No part of the income or principal transferred to the Charitable Lead Trusts will be owned by Taxpayer under § 671 due to the application of § 677.
14. No part of the income or principal transferred to the Charitable Lead Trusts will be owned by Taxpayer under § 671 due to the application of § 678.
15. The payments of the annuity amount from the Charitable Lead Trusts to a charitable organization will be amounts that are paid for a purpose specified in § 170(c).
16. The payment of the annuity amount from the Charitable Lead Trusts to a charitable organization will be allowed as an income tax charitable deduction in computing each Charitable Lead Trust's taxable income under § 642(c) to the extent paid from gross income.

RULINGS 1 and 2

Section 2501 provides that a tax is imposed each calendar year on the transfer of the property by gift during each 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 the donor's own benefit or for the benefit of another, the gift is incomplete.

Section 25.2511-2(c) provides, in part, that a gift is incomplete in every instance in which a donor reserves the power to revest the beneficial title to the property in himself. A gift is also incomplete if and to the extent that a reserved power gives the donor the power to name new beneficiaries or to change the interests of the beneficiaries as between themselves.

Section 2522(a) provides, in part, 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 (other than an interest described in § 170(f)(3)(B)) to a person, or for a use, described in § 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 § 2522(a), no deduction shall be allowed for the interest which is, or has been transferred to the person, or for the use, described in § 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 § 664) or a pooled income fund (described in § 642(c)(5)), or (B) in the case of any other 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, each of whom must be living at the date of the gift and can be ascertained at such date.

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, Taxpayer's transfer of assets to the Charitable Lead Trusts constitutes a completed gift under § 25.2511-2(b) because (i) the Charitable Lead Trusts are irrevocable, (ii) Taxpayer has retained no interest or reversion in the trusts, and (iii) Taxpayer is prohibited from serving as a trustee of the Charitable Lead Trusts or as a director of Family Foundation. In addition, Trust Agreement provides certain qualified charitable organizations, including Family Foundation, with the irrevocable right to receive an annual annuity of \$70,000 from each Charitable Lead Trust.

Based on the forgoing, we conclude that the annuity payable under each Charitable Lead Trust satisfies the requirements of § 25.2522(c)-3(c)(2)(vi) and

constitutes a guaranteed annuity for purposes of § 2522(c)(2)(B). Accordingly, Taxpayer is entitled to a gift tax deduction under § 2522(a), based on the present value of the guaranteed annuity of each Charitable Lead Trust payable to charity as determined under § 25.2512-5.

RULINGS 3, 4, 5, 6, 7 and 8

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 the decedent's death.

Section 2035(a) provides that if – (1) the decedent made a transfer (by trust or otherwise) of an interest in any 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 (2) the value of such property (or an interest therein) would have been included in the decedent's gross estate under § 2036, 2037, 2038, or 2042 if such transferred interest or relinquished power had been retained by the decedent on the date of the decedent's death, then the value of the gross estate shall include the value of any property (or interest therein) that would have been so included.

Section 2036(a) provides that the value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in 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 or for any period not ascertainable without reference to the decedent's death or for any period which does not in fact end before the decedent's death – (1) the possession or enjoyment of, or the right to the income from, the property, or (2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom.

Section 20.2036-1(a) of the Estate Tax Regulations, provides, in part, that for purposes of § 2036, an interest or right is treated as having been retained or reserved by the decedent, if at the time of the transfer there was an understanding, express or implied, that the interest or right would later be conferred.

Section 2037(a) provides that the value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time after September 7, 1916, 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, if – (1) possession or enjoyment of the property can, through ownership of such interest, be obtained only by surviving the decedent, and (2) the decedent has retained a reversionary interest in the property and the value of such reversionary interest immediately before the death of the decedent exceeds 5 percent of the value of such property.

Section 2038(a)(1) provides that the value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, where the enjoyment thereof was subject at the date of the decedent's death to any change through the exercise of a power (in whatever capacity exercisable) by the decedent alone or by the decedent in conjunction with any other person to alter, amend, revoke, or terminate, or where any such power is relinquished during the 3-year period ending on the date of the decedent's death.

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

Section 2041(b)(1)(A) provides that a general power of appointment is a power that is exercisable in favor of the decedent, the decedent's estate, the decedent's creditors, or the creditors of the decedent's estate, except that a power to consume, invade or appropriate property for the benefit of the decedent which is limited by an ascertainable standard relating to the health, education, support, or maintenance of the decedent shall not be deemed a general power of appointment.

Section 2042(2) provides that the value of the gross estate shall be the value of all property to the extent of the amount receivable by all other beneficiaries as insurance under policies on the life of the decedent with respect to which the decedent possessed at death any of the incidents of ownership, exercisable either alone or in conjunction with any other person.

In the present case, the Charitable Lead Trusts created under the terms of Trust Agreement are irrevocable. For a twenty-one year period commencing on Date 1, Trustee must distribute annually a fixed annuity amount of \$70,000 to organizations described in §§ 170(c) and 2522(a). Upon the termination of the twenty-one year annuity period, the remaining property in each Charitable Lead Trust will pass to or for the benefit of the child of Taxpayer for whom the trust was created and/or such child's descendants.

Taxpayer has not retained any (i) interest or reversion in the Charitable Lead Trusts, (ii) any right to alter, amend, or revoke the Charitable Lead Trusts, or (iii) any right to receive an annuity or other payment from the Charitable Lead Trusts during Taxpayer's lifetime. In addition, Taxpayer holds no general power of appointment over the property in the Charitable Lead Trusts.

Assuming there is no understanding, express or implied, between Taxpayer and Trustee regarding the disposition of the amounts held as part of the Charitable Lead Trusts, we conclude that no portion of the assets of the Charitable Lead Trusts will be included in Taxpayer's gross estate under § 2036, § 2037, § 2038, § 2041 or § 2042 for federal estate tax purposes. We further conclude that because no portion of the assets transferred by Taxpayer to the Charitable Lead Trusts will be includible in Taxpayer's gross estate under § 2036, § 2037, § 2038, or § 2042, no portion of the assets transferred by Taxpayer to the Charitable Lead Trusts will be includible in Taxpayer's gross estate under § 2035.

RULINGS 9, 10, 11, 12, 13 and 14

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 any adverse party.

Section 674(b)(4) provides that § 674(a) shall not apply to a power to determine the beneficial enjoyment of the corpus or the income therefrom if the corpus or income is irrevocably payable for a 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.

Section 676(a) provides that the grantor shall be treated as the owner of any portion of a trust, whether or not he is treated as such owner under any other provision

of part I, subchapter J, chapter 1, where at any time the power to revest in the grantor title to such portion is exercisable by the grantor or a nonadverse party, or both.

Section 677(a) provides, in general, that the grantor shall be treated as the owner of any portion of a trust, whether or not he is treated as such owner under § 674, whose income without the approval or consent of any adverse party is, or, in the discretion of the grantor or a nonadverse party, or both, may be (1) distributed to the grantor or the grantor's spouse; (2) held or accumulated for future 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 partially 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 the Charitable Lead Trusts reveals none of the circumstances that would cause Taxpayer or any other person to be treated as the owner of any portion of the Charitable Lead Trusts under § 673, § 674, § 676, § 677, or § 678.

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

RULING 15

Section 170(a) provides, subject to certain limitations, a deduction for charitable contributions as defined in § 170(c), payment of which is made in the taxable year.

Section 170(c) provides in part, for purposes of § 170, the term "charitable contribution" means a contribution or gift to or for the use of: (1) federal or other government entities for exclusively public purposes; (2) a corporation, trust, or community chest, fund, or foundation created in the United States and organized exclusively for religious, charitable, scientific, literary, or educational purposes (with no part of the net earnings inuring to the benefit of a private shareholder or individual); or (3) certain transfers to fraternal or veterans organizations.

In this case, each Charitable Lead Trust provides that the annuity amount is to be distributed to Family Foundation or one or more organizations described in § 170(c). Further, each Charitable Lead Trust provides that in the event that Family Foundation is not an organization of the type described in § 170(c) during the charitable term, the amount that would have been paid to Family Foundation will instead be paid to one or more organizations described in § 170(c),

Accordingly, the annuity amount paid by each Charitable Lead Trust will be paid for purposes specified in § 170(c).

RULING 16

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 (relating to unrelated business income).

Section 681(a) provides that no charitable deduction is allowable 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 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 the Charitable Lead Trusts have unrelated business income under § 681(a), and except to the extent that contributions are nondeductible under § 508(d) or § 4948(c), the Charitable Lead Trusts will be allowed deductions in accordance with § 642(c)(1) for amounts of gross income paid to Family Foundation or other charitable organizations during that taxable year, or the close of the following taxable year, if Trustee makes 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 that the amount distributed has been included in the gross income of the trust and provided no deduction was allowed for any previous taxable year for the amount distributed.

In addition, the ordering of income distributions provided in Paragraph 2.03 of Trust Agreement will not be given effect for federal income tax purposes because the ordering provision has no economic effect on the distributions independent of tax consequences. Trust Agreement requires that the Charitable Lead Trusts pay annually a stated annuity amount to organizations described in §§ 170(c) and 2522(a), regardless of the amount or character of income earned by the Charitable Lead Trusts.

Instead, income distributed to the organizations described in §§ 170(c) and 2522(a) shall consist of the same proportion of each class of the items of income of that Charitable Lead Trust as the total of each class bears to the total of all classes. See § 1.642(c)-3(b)(2).

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

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 an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Melissa C. Liquerman

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Branch Chief, Branch 9
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure

Copy for 6110 purposes