

**Internal Revenue Service**

Number: **200149016**  
Release Date: 12/7/2001  
Index No.: 643.06-00; 2522.02-04

**Department of the Treasury**

P.O. Box 7604  
Ben Franklin Station  
Washington, DC 20044

Person to Contact:

Telephone Number:

Refer Reply To:  
CC:PSI:4 - PLR-110049-01  
Date:  
August 30, 2001

Re:

Legend:

Settlor =  
Date 1 =  
Trust =

Institute =  
Date 2 =  
Date 3 =  
W=  
X =  
Y =  
Z =  
Date 4 =

Dear :

This is in response to a letter dated February 8, 2001, and subsequent correspondence, requesting a ruling under § 2522 of the Internal Revenue Code regarding two proposed transfers to Trust.

Facts

The facts submitted and representations made are as follows. On Date 1, Settlor executed a trust agreement establishing Trust.

Under Article IA. of the trust agreement, Settlor is designated as trustee. Institute is designated as the "Charitable Beneficiary" of Trust to receive annual distributions from Trust during the "Charitable Term". The Charitable Term is defined as a period of 40 years commencing on Date 1. During the Charitable Term no other entity, or individual, may receive distributions from Trust.

Article IA. also provides that any individual, including Settlor, may make gifts to Trust to be administered in accordance with the trust agreement. Under Article III B., each contribution and its earnings will be held in a separate account which will be invested separately and accounted for pursuant to a discrete set of books and records.

At the time of each gift, the respective donor will indicate a "separate annual distribution" amount to be distributed to Institute during each calendar year for the remaining balance of the Charitable Term from the funds held in the separate account. Under Article IIIC., if Institute is not an organization described in §§170(c), 2522(a), and 2055(a) at the time of any payment, the separate annual distribution will be paid to organizations that are so described. Under Article IIID., on the expiration of the Charitable Term, the remaining assets held in each separate account established under Trust will be retained in further trust for the benefit of Settlor's issue.

The funds in each separate account will not be commingled with the funds held in other separate accounts and will not be used to pay the separate annual distribution to Institute with respect to any other separate account. Expenses specifically attributable to each separate account will be paid from that account. Shared administrative or accounting expenses that cannot be allocated to a single separate account will be charged pro rata based on the percentage of total income each separate account earns. Each separate annual distribution made from an account will be treated as consisting of the same proportion of each class of income of the respective separate account from which that distribution is made as the total of each class bears to the total of all classes.

Article IVA. prohibits both the acquisition and the retention of assets which would give rise to a tax under § 4944. Article VIA. provides that transfers to Trust are intended to qualify for the gift and estate tax charitable deductions under §§ 2522 and 2055, respectively. The article further provides that it is not intended that Trust or the separate accounts established thereunder constitute grantor trusts under § 671. The trustee is authorized to amend the trust agreement during the Charitable Term to ensure compliance with this express intent of Settlor.

Settlor proposes to make two contributions to Trust, "Gift 1" on Date 2 and "Gift 2" on Date 3. The gift instrument for Gift 1 provides that Settlor is transferring to the trustee of Trust the amount of \$W to be held subject to the provisions of Article III. The instrument further provides that each year during the Charitable Term the trustee will pay the amount of the separate annual distribution of \$X to the Institute, pursuant to Article IA. The gift instrument for Gift 2 provides that Settlor is transferring to the trustee the amount of \$Y to be held subject to the provisions of Article III. The instrument further provides that each year during the Charitable Term the trustee will pay the amount of the separate annual distribution of \$Z to the Institute, pursuant to Article IA.

The trustee has requested a ruling that the separate annual distribution payable with respect to Gift 1 and Gift 2 will each be a "guaranteed annuity" under § 25.2522(c)-3(c)(2)(vi) that qualifies for the gift tax charitable deduction under § 2522(a).

#### Law

Section 643(f) provides that 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 tax.

Section 2522(a) provides that in computing taxable gifts for the calendar year, there shall be allowed as a deduction the amount of all gifts made during such year to or for the use of a corporation, or trust, or community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 2522(c)(2) disallows the gift tax charitable deduction where a donor transfers an interest in property (other than an interest described in § 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), 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, such interest is in the form of a guaranteed annuity or is a fixed percentage distributed yearly of the fair market value of the property (to be determined yearly).

Under § 25.2522(c)-3(c)(2)(vi)(a), 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 the life or lives of certain individuals. 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 the gift.

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

### Analysis

As described above, the amounts transferred to Trust with respect to Gift 1 and Gift 2 will be held in separate accounts. Each account will be separately invested and will be accounted for based on a discrete set of books and records. The funds in each account will not be commingled with the funds in the other account (or any other

separate account established under the terms of Trust) and will not be used to fund the separate annual distribution of any other account even if assets of the other separate account have been exhausted.

The trust agreement contains the language required under § 25.2522(c)-3(c)(2)(vi)(e), should the date of gift present value of either annuity paid under Gift 1 and Gift 2, respectively, exceed 60 percent of the date of gift contribution. For purposes of § 25.2522(c)-3(c)(2)(vi), on the date that each gift is made, a determinable amount will be payable to the Institute from the respective gift.

Each of the two contributions will have a separate charitable term that commences on the date of contribution and terminates on Date 4 (the date that is 40 years after Date 1).

Accordingly, based on the facts submitted and the representations made, we conclude that, under § 643(f), the separate accounts established for Gift 1 and for Gift 2, respectively, will be separate trusts for federal income tax purposes. Further, we conclude that the separate annual distributions paid with respect to Gift 1 and Gift 2 will each be a "guaranteed annuity" under § 25.2522(c)-3(c)(2)(vi) that qualifies for the gift tax charitable deduction under § 2522(a).

Except as specifically ruled herein, we express no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code. In addition, we are specifically not ruling regarding the tax treatment of any future contributions, or annuities established in the future, under the trust agreement.

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

Sincerely yours,  
George L. Masnik  
Chief, Branch 4  
Office of Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosure

Copy for section 6110 purposes