

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B09
PLR-143184-04

Date:
June 02, 2005

Legend

- Grantor 1 =
- Grantor 2 =
- Trust =
- A =
- Foundation =
- Date 1 =
- Date 2 =

Dear :

This is in response to your authorized representative's letter of May 4, 2005, and prior correspondence in which you request rulings under sections 2522, 2033, 2035, 2036 and 2038 of the Internal Revenue Code. The facts and representations submitted are as follows.

Grantor 1 and Grantor 2 are husband and wife. On Date 1, Grantor 1 and Grantor 2 created Trust, an irrevocable trust, and propose to fund it with cash and publicly traded securities. A is designated as trustee.

THE TRUST

Article I(A) of Trust indenture provides that Trust is to pay a unitrust amount annually to Foundation. Article I(C) defines the unitrust amount as an amount equal to 9 percent of the net fair market value of Trust assets, determined as of the first business day of each taxable year. Article I(D) provides that Trust will terminate fifteen years after the date of funding of Trust. On termination, the remaining principal (other than any amount distributable to charity) will be distributed to named grandchildren, either outright or in trust, depending upon whether a trust then exists for the benefit of that grandchild.

Article II(B) provides that for a short taxable year, and for the year in which the unitrust payments terminate, the unitrust amount is to be prorated on a daily basis. Subject to the above, additional contributions may be made to Trust.

Article III provides that if, at the time of any distribution, Foundation is not an organization described in sections 170(c), 2055(a) and 2522(a), the trustee is to pay the unitrust amount to such charitable organizations described in these sections as the trustee selects in his sole discretion.

Article IV provides that the trustee is prohibited from engaging in any act of self-dealing as defined in section 4941(d), from making any taxable expenditures as defined in section 4945(d), from retaining any excess business holdings as defined in section 4943(c) that would subject Trust to tax under section 4943, and from acquiring or retaining any assets that would subject Trust to tax under section 4944. The trustee is to make distributions at such times and in such manner as not to subject Trust to tax under section 4942.

Article VII provides for the appointment of successor trustees, subject to the limitation that neither Grantor 1 nor Grantor 2 may be appointed as trustee.

THE FOUNDATION

Article III of the articles of incorporation of Foundation provides that the purpose of Foundation is to make grants to one or more public charitable organizations described in sections 501(c)(3), 170(b), 2055(a) and 2522(a).

Article III of the by-laws of Foundation provides that the board of directors consists of no less than three individuals who shall be elected annually by the existing board of directors. Grantor 1 and Grantor 2 are two of the initial five directors of Foundation.

Article III(L) of the by-laws (as well as article VII(d) of the articles of incorporation) provides that any director who is also the grantor of a charitable lead trust that has Foundation as its charitable beneficiary may not cast any vote for the appointment of any individual as director if such individual is either related or subordinate to such grantor within the meaning of section 672. Further, such grantor/director may not vote on matters relating to funds received from the charitable lead trust, or act on any matter relating to those funds, including voting on any disbursements or grants from such funds. Finally, any funds received from the charitable lead trust shall at all times be maintained in a separate account.

On Date 2, the Internal Revenue Service issued a determination letter indicating that Foundation is exempt from federal income tax under section 501(a) as an organization described in section 501(c)(3) and that Foundation is a private foundation within the meaning of section 509(a).

Grantor 1 and Grantor 2 have asked for the following rulings:

- 1) Trust is a charitable lead unitrust, the funding of which will be a completed gift for federal gift tax purposes. Upon funding Trust, Grantor 1 and Grantor 2 will be entitled to a gift tax deduction under section 2522 based on the present value of the unitrust interest, determined in accordance with section 25.2522-3(d)(2)(v) of the Gift Tax Regulations.
- 2) On the death of either Grantor 1 or Grantor 2, no portion of the principal of Trust will be included in his or her gross estate pursuant to sections 2033, 2035, 2036 or 2038.

RULING REQUEST 1

Section 2501 provides for the imposition of a gift tax on the transfer of property by gift.

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) 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 section 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 section 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 section 2522(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)(vii) defines the term "unitrust interest" as an irrevocable right

pursuant to the instrument of transfer to receive payment, not less often than annually, of a fixed percentage of the net fair market value, determined annually, of the property that funds the unitrust interest. In computing the net fair market value of the property that funds the unitrust interest, all assets and liabilities shall be taken into account without regard to whether particular items are taken into account in determining the income from the property. The net fair market value of the property that funds the unitrust interest may be determined on any one date during the year or by taking the average of valuations made on more than one date during the year, provided that the same valuation date or dates and valuation methods are used each year. Payments under a unitrust interest may be paid 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.

Section 25.2522(c)-3(c)(2)(vii)(e) provides that where a charitable interest in the form of a unitrust interest is in trust, the charitable interest generally is not a unitrust interest if any amount may be paid by the trust for a private purpose before the expiration of all the charitable unitrust interests.

Section 25.2522-3(d)(1) provides that the amount of the deduction in the case of the contribution of a partial interest in property is the fair market value of the partial interest on the date of the gift. The fair market value of a unitrust interest is its present value.

Section 25.2522-3(d)(2)(v) provides that the present value of a unitrust interest is determined by subtracting the present value of all interests in the transferred property other than the unitrust interest from the fair market value of the transferred property.

Grantor 1 and Grantor 2 created Trust, an irrevocable unitrust, under which a unitrust amount is distributed annually to Foundation, a qualified charitable organization, for a term of years. At the end of the term of years, the remaining Trust assets will be distributed to Grantor 1 and Grantor 2's grandchildren or their issue. Grantor 1 and Grantor 2 now propose to fund Trust.

Grantor 1 and Grantor 2 may not serve as trustees of Trust, may not appoint any related or subordinate individual as a director of Foundation, and may not act on any matter concerning funds received by Foundation from Trust. Any funds received by Foundation from Trust shall at all times be maintained in a separate account. Thus, upon funding, Grantor 1 and Grantor 2 will give up all dominion and control of the transferred funds, and will have no power to change their disposition. The unitrust interest payable to Foundation satisfies the requirements of section 25.2522(c)-3(c)(2)(vii) and is, therefore, a fixed percentage distributed yearly of the fair market value of the property, within the meaning of section 2522(c). The unitrust interest payable to Foundation is the sole amount payable from Trust prior to Trust termination. Accordingly, the transfer to Trust will be a completed gift for federal gift tax purposes and Grantor 1 and Grantor 2 will be entitled to a gift tax charitable deduction, to the extent of his or her contribution, in the amount of the present value of the unitrust

interest payable to Foundation determined in accordance with section 25.2522-3(d)(2)(v).

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 provides, in part, that if 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 the value of such property (or an interest therein) would have been included in the decedent's gross estate under section 2036, 2037, 2038, or 2042 if such transferred interest or relinquished power had been retained by the decedent on the date of his death, the value of the gross estate shall include the value of any property (or interest therein) that would have been so included.

Section 2036 provides, in part, 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 he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death the possession or enjoyment of, or the right to the income from, the property, or 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 2038 provides, in part, 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 his 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 (without regard to when or from what source the decedent acquired such power), 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.

Grantor 1 and Grantor 2 created Trust, an irrevocable unitrust, under which a unitrust amount is distributed annually to Foundation for a term of years. At the end of the term of years, the remaining Trust assets will be distributed to Grantor 1 and Grantor 2's grandchildren or their issue. Grantor 1 and Grantor 2 may not serve as trustees of

Trust, may not appoint any related or subordinate individual as a director of Foundation, and may not act on any matter concerning funds received by Foundation from Trust. Thus, Grantor 1 and Grantor 2 have retained no interest in, no right to alter or revoke, and no reversion in the property transferred to Trust. Accordingly, no portion of the property transferred to Trust will be included in the gross estate of either Grantor 1 or Grantor 2.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

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.

A copy of this letter must be attached to any income tax return to which it is relevant.

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,

James F. Hogan
Senior Technician Reviewer, Branch 9
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure

Copy for section 6110 purposes