Internal Revenue Service

Number: **202047005**
Release Date: 11/20/2020

Index Number: 170.00-00, 2522.00-00, 664.00-00, 664.03-00, 664.03-02

Department of the Treasury
Washington, DC 20224

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

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CC:PSI:01
PLR-108982-19

Date:
August 14, 2020

Legend

Taxpayer =

Spouse =

Trust =

Foundation =

State =

D1 =

D2 =

Dear :

This letter responds to a letter dated April 5, 2019, and subsequent correspondence, submitted on behalf of Taxpayer, Spouse, Trust, and Foundation by their authorized representative, requesting rulings regarding the tax consequences of a proposed termination of a charitable remainder annuity trust (CRAT).

The information submitted states that Taxpayer and Spouse, residents of State, created Trust, on D2. Taxpayer and Spouse represent that Trust qualifies as a CRAT under the provisions of section 664(d)(1) of the Internal Revenue Code. The annuity beneficiaries of Trust are Taxpayer and Spouse. Taxpayer is trustee of the Trust. The remainder beneficiary of Trust is Foundation, a charitable organization described in sections 170(c), 2055(a) and 2522(a). Foundation was formed on D1 and is classified as a private foundation pursuant to section 509. Taxpayer and Spouse are "substantial contributors" to Foundation within the meaning of section 4946. Taxpayer and Spouse also represent that Trust is a trust described in section 4947(a)(2). Taxpayer and Spouse are also members of the Board of Directors and Officers of Foundation.

Trust's assets consist of marketable securities. Pursuant to the Trust agreement, during the joint lifetimes of Taxpayer and Spouse, the Trustee shall pay to Taxpayer and Spouse in equal shares an annuity amount equal to five percent (5%) of the initial fair market value of all property transferred to the Trust. Upon the first to die of Taxpayer and Spouse, the Trustee shall pay the entire annuity payment (subject to any proration between the estate of the predeceased and the survivor pursuant to the Trust agreement) to the survivor of Taxpayer and Spouse. The annuity payment shall be paid in annual installments at the end of each calendar year first from income and, to the extent that income is not sufficient, from principal. Upon the death of the survivor of Taxpayer and Spouse, the Trustee shall distribute all of the then remaining trust property (other than any annuity payment due to Taxpayer, Spouse or their respective estates, as the case may be, pursuant to the terms of the Trust agreement) to Foundation for its general purposes.

Further under the Trust agreement, Taxpayer and Spouse reserved the right to designate, acting jointly if they are both living and competent or severally if only one of Taxpayer and Spouse is living and competent, at any time and from time to time, in lieu of Foundation, one or more organizations described in sections 170(c), 2055(a) and 2522(a) of the Code as the charitable remainderman by giving written notice to the Trustee.

At the time Trust was created Taxpayer and Spouse were residents of State. Accordingly, Trust provides that State law governs the interpretation of Trust. Taxpayer and Spouse have remained residents of State since the creation of Trust.

Taxpayer and Spouse propose to contribute their undivided annuity trust interest in Trust to the Foundation. In order to accomplish this result, Taxpayer, in his individual capacity and as trustee of Trust, and Spouse, in her individual capacity, propose the following transaction.

Taxpayer and Spouse will assign to Foundation (not in trust) their undivided annuity interest in Trust. Taxpayer (in his capacity as Trustee as well as individually), Spouse, and Foundation will consent to the transfer. Taxpayer represents this will result in a merger of the annuity and remainder interests under the common law doctrine of merger in State. Following the proposed transaction described herein, the annuity

interest and remainder interest in Trust will each be owned by Foundation, and Taxpayer and Spouse will seek a court order terminating Trust. The State attorney general will be made a party to the termination proceeding.

Taxpayer and Spouse represent that the assignment of Taxpayer's and Spouse's undivided annuity interest in Trust is permitted under State law.

Taxpayer, Spouse, Trust, and Foundation request the following rulings:

1. Taxpayer and Spouse request a ruling that their transfer of their undivided annuity interest in Trust to Foundation will not entitle Taxpayer and Spouse to an income tax charitable contribution deduction pursuant to section 170; rather, such transfer will be recognized as a gift pursuant to the provisions of section 1.170A-1(h), and not as a sale and, accordingly, Taxpayer and Spouse will not realize and/or recognize any taxable income (whether ordinary or capital in nature) upon the transfer of their annuity interest in Trust to Foundation.

2. Taxpayer and Spouse request a ruling that for the year in which they transfer their undivided annuity interest in Trust to Foundation, Taxpayer and Spouse will entitled to a gift tax charitable contribution deduction pursuant to the provisions of section 2522 to the extent of the present value of the annuity interest transferred to Foundation, calculated as of the date of such transfer as provided in sections 664 and 7520 and section 1.664-2(c).

3. Taxpayer and Spouse request a ruling that for the year in which they irrevocably designate Foundation as the designated charitable remainderman of Trust and transfer their undivided annuity interest to Foundation, Taxpayer and Spouse will be entitled to a gift tax charitable contribution deduction pursuant to section 2522(a) for the fair market value of the remainder interest transferred to Foundation, calculated as provided in section 1.664-2(c).

4. Taxpayer and Spouse request a ruling that if at the time they transfer their undivided annuity interest to Foundation, Trust has realized but undistributed capital gain income from prior years, which capital gain income has not been previously distributed as a part of the annuity amounts paid to Taxpayer and Spouse and therefore not recognized for Federal income tax purposes by Taxpayer and Spouse, such undistributed realized capital gain income will not result in the recognition of such income and/or the inclusion of such income in Taxpayer’s and Spouse’s gross income (as determined pursuant to section 61) as a result of Taxpayer’s and Spouse’s transfer of their undivided annuity interest to Foundation.

5. Taxpayer and Spouse request a ruling that their transfers of their undivided annuity interest in Trust to Foundation will not result in an act of self-dealing, as defined in section 4941(d)(1).

6. Trust and Foundation request a ruling that Taxpayer's and Spouse's transfer of their undivided annuity interest in Trust will not subject Trust and/or Foundation to a termination tax, as defined in section 507.

RULING 1

Section 170(a)(1) provides for an income tax charitable contribution deduction for any charitable contribution (as defined in section 170(c)) payment of which is made within the taxable year.

Section 170(c)(2) provides that the term "charitable contribution" means a contribution or gift to or for the use of a corporation, trust, or community chest, fund, or foundation, organized or created in the United States or its possessions, or under the laws of the United States, any state, the District of Columbia or any possession of the United States, and organized and operated exclusively for charitable, religious, educational, scientific, or literary purposes, or for the prevention of cruelty to children or animals.

Section 170(f)(2) deals with contributions of property placed in trust. With respect to the contribution of income interests, section 170(f)(2)(B) provides that no deduction shall be allowed under this section for the value of any interest in property (other than a remainder interest) transferred in trust unless the interest is in the form of a guaranteed annuity or the trust instrument specifies that the interest is a fixed percentage distributed yearly of the fair market value of the trust property and the grantor is treated as the owner of such interest.

Section 170(f)(3)(A) provides that, in the case of a contribution (not made by a transfer in trust) of an interest in property which consists of less than the taxpayer's entire interest in such property, a deduction shall be allowed under this section only to the extent that the value of the interest contributed would be allowable as a deduction under this section if such interest had been transferred in trust.

Section 1.170A-7(a)(2)(i) provides that a deduction is allowed for a contribution of a partial interest in property if such interest is the taxpayer's entire interest in such property, such as an income interest or a remainder interest. If, however, the property in which such partial interest exists was divided in order to create such interest and thus to avoid application of section 170(f)(3)(A), the deduction will be disallowed.

Section 170(f)(3)(B)(ii) provides that section 170(f)(3)(A) does not apply to a contribution of an undivided portion of the taxpayer's entire interest in property. Section 1.170A-7(b)(1) provides that an undivided portion of a taxpayer's entire interest in property must consist of a fraction or percentage of each and every substantial interest or right owned by the taxpayer in the property and must extend over the entire term of the taxpayer's interest in the property.

Section 1.170A-1(c)(1) provides that, if a charitable contribution is made in property other than money, the amount of the contribution is generally the fair market value of the property at the time of the contribution.

Section 170(e)(1)(B)(ii) provides that the income tax charitable contribution deduction allowed for a contribution of appreciated property to or for the use of a private foundation (as described in section 509) otherwise based on fair market value must be reduced by the total amount of the gain that would have been realized if the contributed property had been sold at its fair market value.

In Rev. Rul. 86-60, 1986-1 C.B. 302, Situation 1, in 1980, A created a charitable remainder annuity trust described in section 664(d)(1). A retained the annuity interest in the trust for life. The remainder beneficiary was X, a charitable organization described in sections 170(c) and 2522(a). In 1984, A transferred the entire annuity interest in the trust to X. The Service ruled that, although A had previously divided the interest A held in the property, the division was not to avoid section 170(f)(2)(A). Thus, under section 1.170A-7(a)(2)(i), A's transfer of A's entire life annuity interest qualified for an income tax charitable deduction.

In Rev. Rul. 86-60, Situation 2, in 1980, A created a charitable remainder annuity trust described in section 664(d)(1). The trust instrument provided that the trustee shall pay the annuity amount annually to A for life and upon A's death to B, the successive life interest beneficiary, for such time as B survived. Upon the death of the survivor of A and B, the corpus was to be distributed to a charitable organization that meets the requirements of sections 170(c) and 2522(a). In 1984, A and B assigned their respective interests in the trust to the charitable remainder beneficiary. The Service ruled that, although A had previously divided the interest A held in the property, that division was not to avoid section 170(f)(3)(A). Thus, under section 1.170A-7(a)(2)(i), A's transfer of A's entire life annuity interest qualified for an income tax deduction. Further, in 1984, B transferred B's secondary life annuity interest (the only interest in the charitable remainder trust that B ever owned) to the charitable remainder beneficiary. The Service ruled that under section 1.170A-7(a)(2)(i), B's transfer of B's entire secondary life annuity interest qualified for an income tax charitable contribution deduction.

Generally, section 170(a)(1) would permit an income tax charitable contribution deduction for the present value of an annuity interest assigned to a charitable organization; such assignment would be treated as a gift for Federal income tax purposes.

Analogous to the taxpayer in Situation 1 in Rev. Rul. 86-60, Taxpayer and Spouse desire to transfer their undivided annuity interest to Foundation, a charitable organization described in sections 170(c) and 2522(a). Pursuant to section 170(e)(1)(B)(ii), Taxpayer's and Spouse's income tax charitable contribution deduction will be reduced by the total amount of the gain that would have been realized if the contributed property had been sold at its fair market value. Pursuant to section 1001 et.

seq., as described above, Taxpayer's and Spouse's basis in the annuity interest will be zero, thus resulting in a gain equal to their entire interest transferred, and no income tax charitable contribution deduction will be allowed for the assignment of their annuity interest.

Despite the fact that Taxpayer and Spouse will not be eligible for an income tax charitable contribution deduction for the assignment of their undivided annuity interest, Rev. Rul. 86-60 provides that the assignment of an annuity interest is treated as a gift under section 1.170A-1(h), and not as a sale or exchange of a capital asset that would result in taxable income to Taxpayer and Spouse.

Section 170(a)(1) allows as a deduction any charitable contribution (as defined in subsection (c)) payment of which is made within the taxable year. Special rules apply for contributions to private foundations. Pursuant to section 170(e)(B)(ii), the amount of any charitable contribution of property otherwise taken into account under section 170 is reduced by the sum of, in the case of a charitable contribution to or for the use of a private foundation (as defined in section 509(a)), other than a private foundation described in subsection (b)(1)(F), the amount of gain which would have been long-term capital gain if the property contributed had been sold by the taxpayer at its fair market value (determined at the time of such contribution). As a result, the charitable contribution deduction for appreciated property to private foundations is generally limited to the donor's basis in the property, which in this case, is zero.

RULINGS 2 and 3

Section 2501 imposes a tax for each calendar year on the transfer of property by gift by any individual. Section 2511(a) provides, in part, that subject to limitations contained in chapter 12, the tax imposed by section 2501 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, in relevant part, that a gift is complete and subject to the gift tax when the donor has so parted with dominion and control over the property transferred as to leave in the donor no power to change its disposition, whether for the donor's own benefit or for the benefit of another.

Section 25.2511-2(c) provides, in relevant 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.

Under Section 2512(a), if a gift is made in property, the value of the property on the date of the gift is the amount of the gift. Section 2512(b) provides that where property is transferred for less than adequate and full consideration in money or money's worth, the

amount by which the value of the property exceeds the value of the consideration received shall be deemed a gift.

Under section 25.2512-5(a), the fair market value of an annuity or unitrust interest is its present value, determined in accordance with section 25.2512-5(d).

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 inure 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 section 170(f)(3)(B)) 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), 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 section 664) or a pooled income fund (described in section 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).

Section 25.2522(c)-3(c)(1)(i) provides, in relevant part, that if a donor transfers an interest in property after July 31, 1969, for charitable purposes and an interest in the same property is retained by the donor, or is transferred or has been transferred for private purposes after such date (for less than an adequate and full consideration in money or money's worth), no deduction is allowed under section 2522 for the value of the interest which is transferred or has been transferred for charitable purposes unless the interest in property is a deductible interest described in section 25.2522(c)-3(c)(2).

Section 25.2522(c)-3(c)(2)(i) provides, in relevant part, that a “deductible interest” for purposes of section 25.2522(c)-3(c)(1) is a charitable interest in property that is an undivided portion, not in trust, of the donor's entire interest in property. An undivided portion of a donor's entire interest in property must consist of a fraction or percentage of each and every substantial interest or right owned by the donor in such property and must extend over the entire term of the donor's interest in such property and in other property into which such property is converted. For example, if the donor gave a life estate in an office building to his wife for her life and retained a reversionary interest in the office building, the gift by the donor of one-half of that reversionary interest to charity while his wife is still alive will not be considered the transfer of a deductible interest; because an interest in the same property has already passed from the donor for private purposes, the reversionary interest will not be considered the donor's entire interest in the property. If, on the other hand, the donor had been given a life estate in Blackacre

for the life of his wife and the donor had no other interest in Blackacre on or before the time of gift, the gift by the donor of one-half of that life estate to charity would be considered the transfer of a deductible interest; because the life estate would be considered the donor's entire interest in the property, the gift would be of an undivided portion of such entire interest.

Section 25.2522(c)-3(d)(1) provides that the amount of the deduction in the case of a contribution of a partial interest in property to which section 2522, applies is the fair market value of the partial interest on the date of gift. The fair market value of an annuity, life estate, term for years, remainder, reversion, or unitrust interest is its present value.

Section 25.2522(c)-3(d)(2)(i) provides that the fair market value of a remainder interest in a charitable remainder annuity trust is its present value as determined under section 1.664-2(c). Section 1.664-2(c) states that, for purposes of section 2522, the fair market value of the remainder interest in a charitable remainder annuity trust is the net fair market value of the property placed in trust (valued as of the appropriate valuation date), less the present value of the annuity.

As discussed above, situation 1 of Rev. Rul. 86-60, 1986-1 C.B. 302, ruled that the transfer of an annuity interest to charity was not required to be in a form described in section 2522(c)(2)(B) and section 25.2522(c)-3(c)(2) in order to qualify for the charitable deduction and, accordingly, the transfer of the annuity interest to charity qualified for a deduction under section 2522(a).

The facts in this case are similar to those described in Situation 1 of Rev. Rul. 86-60. Taxpayer and Spouse will transfer their undivided annuity interests in Trust to Foundation. Taxpayer and Spouse will not retain any interest in Trust, and neither at the time of the intended transfer nor at any prior time will Taxpayer or Spouse make a transfer of trust property for private purposes. Consequently, Taxpayer’s and Spouse’s transfer of their undivided annuity interests to Foundation is not required to be in a form described in section 2522(c)(2)(B) and section 25.2522(c)-3(c)(2) in order to qualify for the charitable deduction.

Accordingly, based on the facts presented and the representations made, we conclude that for the year in which Taxpayer and Spouse transfer their undivided annuity interest in Trust to Foundation, Taxpayer and Spouse will be entitled to a gift tax charitable contribution deduction pursuant to the provisions of section 2522. The value of the deduction will be the present value of that annuity interest transferred to Foundation, calculated as of the date of such transfer as provided in section 25.2512-5(a).

Furthermore, in this case, Taxpayer and Spouse retained the right to designate the charitable beneficiaries of Trust. Pursuant to section 25.2511-2(c), the gift to Foundation was incomplete upon funding of Trust. Taxpayer and Spouse will irrevocably release the right to designate charitable beneficiaries of Trust. As a result, Foundation will be irrevocably designated as the charitable remainderman of Trust.

Thereafter, Taxpayer and Spouse will assign to Foundation their annuity interest in Trust and seek a termination of Trust. This will result in a merger of the annuity and remainder interests of Trust under the common law doctrine of merger. Following the proposed transaction, Foundation will own a fee interest, not in trust, in the assets of Trust. The result of these transactions is that Taxpayer and Spouse will make a gift of a deductible interest as described in section 25.2522(c)-3(c)(2) to Foundation. Accordingly, based on the facts presented and the representations made, we conclude that Taxpayer and Spouse will be entitled to a gift tax charitable deduction pursuant to section 2522(a) for the fair market value of the remainder interest transferred to Foundation, calculated as provided in section 1.664-2(c).

RULING 4

Section 61(a)(3) provides that gross income includes gains derived from dealings in property and, under section 61(a)(14), income from an interest in a trust.

Section 1001(a) provides that the gain from the sale or other disposition of property shall be the excess of the amount realized therefrom over the taxpayer's adjusted basis therein provided in section 1011 for determining gain, and the loss shall be the excess of the adjusted basis provided in section 1011 for determining loss over the amount realized.

Section 1001(b) provides that the amount realized from the sale or other disposition of property shall be the sum of any money received plus the fair market value of any other property (other than money) received.

Section 1001(c) provides that, except as otherwise provided in subchapter A of the Code, the entire amount of the gain or loss, if any, realized by the taxpayer on the sale or exchange of property shall be recognized.

Section 1.1001-1(a) provides that the gain or loss realized from the conversion of property into cash, or from the exchange or property for other property differing materially either in kind or in extent, is treated as income or loss sustained.

In Blair v. Commissioner, 300 U.S. 5 (1937), the United States Supreme Court held that a beneficiary of a life interest in trust income made a valid assignment of a portion of that income with a resulting shift in the tax liability on the income from the beneficiary to the assignee. Even though the beneficiary assigned for life his right to specific dollar amounts of trust income as opposed to a fixed percent of his interest, the United States Supreme Court held that, "[i]f under the law governing the trust the beneficial interest is assignable, and if it has been assigned without reservation, the assignee thus becomes the beneficiary and is entitled to the rights and remedies accordingly."

Rev. Rul. 55-38, 1955-1 C.B. 389, addresses circumstances under which the assignor and assignee will be taxed on amounts paid by a trust after the lifetime income beneficiary of a testamentary trust assigns his right to receive a portion of the trust

income. In Rev. Rul. 55-38, the Service determined that where a beneficiary periodically gives his consent to pay a certain portion of the trust income to another individual, the amounts so paid will be taxable as income to the assignor, as the assignor has not parted with a substantial interest in property other than the specified payments of income. The Service held that an income beneficiary's irrevocable assignment of trust income for a period of not less than ten (10) years would be treated as "a disposition of a substantial interest in the trust property" (immunizing him or her from tax under Blair) if the assignor does not retain the type of control that would subject him or her to tax under the grantor trust rules. The ten (10) year safe harbor in the grantor trust rules existing at that time was subsequently repealed, and applied under current law, the Ruling's approach suggests that no fixed period of years is long enough to prevent taxation of a donor retaining a reversionary interest.

The Service has ruled that a taxpayer's sale of an annuity interest in a charitable remainder trust to the remainder beneficiary will result in the taxpayer recognizing income with respect to the property received, without regard to the taxpayer's basis in such property. Additionally, a transaction in which the income interest holders and the charitable remainder beneficiary of a charitable remainder trust each receive a distribution of the present values of their respective interests in the charitable remainder trust is, in substance, a sale of the income interest to the charitable remainder beneficiary. Rev. Rul. 72-243, 1972-1 C.B. 233, provides that a sale of an income interest in a trust is a sale of a capital asset (within the meaning of sections 1221 and 1222).

Taxpayer's and Spouse's situation is distinguishable from situations in which a taxpayer sells an annuity interest in a trust to the remainder beneficiary or where the taxpayer receives a distribution of the present value of the taxpayer's income interest in a trust. In this case, Taxpayer and Spouse will receive no money or property as a result of the assignment of their undivided annuity interest in Trust. Therefore, Taxpayer and Spouse are not disposing of their interest in Trust in exchange for money or property in a transaction governed by section 1001. Accordingly, no gain or loss will be recognized by Taxpayer or Spouse in accordance with section 1001.

Additionally, in Blair, the United States Supreme Court held that future income generated by a trust subsequent to a valid assignment, without reservation, of an income interest will not be taxable to the assignor. In this case, Taxpayer and Spouse will make a valid assignment of their undivided annuity interest in Trust to Foundation, without reservation.

Finally, Taxpayer's and Spouse's assignment, without reservation, of their undivided annuity interest meets the requirements set forth in Rev. Rul. 55-38. In this case, Taxpayer and Spouse propose to make an assignment of their undivided annuity interest and will not retain any reversionary interest in the annuity interest upon the assignment of their annuity interest in Trust to Foundation. Therefore, in accordance with Blair and Rev. Rul. 55-38, Taxpayer and Spouse would prevent income taxation with respect to any future income attributable to the annuity interest assigned to

Foundation. Accordingly, no gain or loss will be recognized by Taxpayer or Spouse in accordance with section 1001.

RULINGS 5 and 6

Section 507(a) imposes an excise tax on the termination of a private foundation and states that except as provided in subsection (b), the status of any organization as a private foundation shall be terminated only if (1) such organization notifies the Secretary (at such time and in such manner as the Secretary may by regulations prescribe) of its intent to accomplish such termination, or (2)(A) with respect to such organization, there have been either willful repeated acts (or failures to act), or a willful and flagrant act (or failure to act), giving rise to liability for tax under chapter 42, and (B) the Secretary notifies such organization that, by reason of subparagraph (A), such organization is liable for the tax imposed by subsection (c).

Section 507(b)(2) provides that for purposes of this part, in the case of a transfer of assets of any private foundation to another private foundation pursuant to any liquidation, merger, redemption, recapitalization, or other adjustment, organization, or reorganization, the transferee foundation shall not be treated as a newly created organization.

Section 4941(a)(1) imposes a tax on each act of self-dealing between a disqualified person and a private foundation.

Section 4941(d)(1) defines self-dealing as any direct or indirect (A) sale or exchange, or leasing, of property between a private foundation and a disqualified person; (B) lending of money or other extension of credit between a private foundation and a disqualified person; (C) furnishing of goods, services, or facilities between a private foundation and a disqualified person; (D) payment of compensation (or payment or reimbursement of expenses) by a private foundation to a disqualified person; (E) transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a private foundation.

Section 4946(a)(1) defines a disqualified person for purposes of section 4941, as any person, who in respect to a private foundation, is any of the following: (A) a substantial contributor to the foundation, (B) a foundation manager (within the meaning of subsection (b)(1)), (C) an owner of more than 20 percent of (i) the total combined voting power of a corporation, (ii) the profits interest of a partnership, or (iii) the beneficial interest of a trust or unincorporated enterprise, which is a substantial contributor to the foundation, (D) a member of the family (as defined in subsection (d)) of any individual described in subparagraph (A), (B), or (C).

Section 4974(a)(2) pertains to split-interest trusts and subjects these trusts, which are not exempt from tax under section 501(a), not all of the unexpired interests in which are devoted to one or more of the purposes described in section 170(c)(2)(B), and which has amounts in trust for which a deduction was allowed under section 170, 545(b)(2),

642(c), 2055, 2106(a)(2), or 2522, to some of the same requirements and restrictions as are imposed on private foundations, such as section 507 (relating to termination of private foundation status). This paragraph shall not apply with respect to (A) any amounts payable under the terms of such trust to income beneficiaries, unless a deduction was allowed under section 170(f)(2)(B), 2055(e)(2)(B), or 2522(c)(2)(B), or to (B) any amounts in trust other than amounts for which a deduction was allowed under section 170, 545(b)(2), 642(c), 2055, 2106(a)(2), or 2522, if such other amounts are segregated from amounts for which no deduction was allowable.

Section 1.507-1(a) provides that except as provided in section 1.507-2, the status of any organization as a private foundation shall be terminated only if: (1) such organization notifies the district director of its intent to accomplish such termination, or (2)(i) with respect to such organization, there have been either willful repeated acts (or failures to act), or a willful and flagrant act (or failure to act), giving rise to a liability for tax under Chapter 42, and (ii) the Commissioner notifies such organization that, by reason of subdivision (i) of this subparagraph, such organization is liable for the tax imposed by section 507(c), and either such organization pays the tax imposed by section 507(c) or the entire amount of such tax is abated under section 507(g).

Section 1.507-1(b)(6) provides that a transfer of all or part of a private foundation's assets to one or more private foundations pursuant to a transfer described in section 507(b)(2), such transferor foundation will not be deemed to have terminated its private foundation status under section 507(a)(1).

Section 1.507-1(b)(7) provides that neither a transfer of all the assets of a private foundation nor a significant disposition of assets by a private foundation shall be deemed to result in a termination of the transferor private foundation under section 507(a) unless the transferor private foundation elects to terminate pursuant to sections 507(a)(1) or 507(a)(2).

Taxpayer and Spouse represent that they are substantial contributors to Foundation and therefore are disqualified persons as described in section 4946(a)(1)(A). Section 4941 imposes an excise tax on acts of self-dealing between a disqualified person and a private foundation. Taxpayer's and Spouse's assignment to Foundation of their annuity interest in Trust does not give rise to an act of self-dealing under section 4941(d)(1).

Taxpayer and Spouse also represent that Trust is a trust described in section 4947(a)(2). As a trust described in section 4947(a)(2), section 507 shall apply as if Trust were a private foundation. The proposed assignment of Taxpayer's and Spouse's interest in their undivided annuity interest in Trust to Foundation is not a transfer as described in section 507(b)(2). As such, the assignment of Taxpayer's and Spouse's interest in their undivided annuity interest in Trust to the Foundation will not give rise to a termination tax under section 507(a).

Accordingly, based on the facts presented and the representations made, we conclude that Taxpayer's and Spouse's assignment of their undivided annuity interest in Trust to

Foundation will not result in an act of self-dealing, as defined in section 4941; and Taxpayer's and Spouse's assignment of their undivided annuity interest in Trust will not subject Trust and/or Foundation to a termination tax, as defined in section 507.

This ruling letter is directed only to Taxpayer and Spouse, in their individual capacities, Taxpayer, as trustee of Trust, and Foundation. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to the taxpayer's authorized representative.

Sincerely,

Faith P. Colson

Faith P. Colson
Senior Council, Branch 1
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

cc: