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Department of the Treasury

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CC:DOM:P&SI:4 - PLR-119572-98

Date: April 13, 1999

Re:

Legend:

Taxpayer =

Company =

Y =

Charity =

Z =

B =

W =

Bank 1 =

Bank 2 =

This is in response to a letter dated October 13, 1998, and subsequent correspondence submitted on behalf of the Taxpayer, requesting the following rulings:

1. The annuity amount to be paid annually for charitable purposes from each charitable lead annuity trust (CLAT) created under Article VII of the proposed trust agreement will constitute a guaranteed annuity interest within the meaning of § 2055(e)(2)(B) of the Internal Revenue Code and § 20.2055-2(e)(2)(vi) of the Estate Tax Regulations. Therefore, on the Taxpayer's death, an estate tax charitable deduction will be allowed under § 2055(a) for the present value of each guaranteed annuity interest, determined in accordance with § 20.2055-2(f)(2)(iv).

2. With respect to each CLAT, an income tax deduction will be allowed under § 642(c)(1) for the amount actually paid to the charitable beneficiary in a calendar year.

3. The unitrust amount to be paid annually for charitable purposes from each charitable lead unitrust trust (CLUT) created under Article VIII of the proposed trust agreement will constitute a unitrust interest within the meaning of

§ 2055(e)(2)(B) and § 20.2055-2(e)(2)(vii). Therefore, on the Taxpayer's death, an estate tax charitable deduction will be allowed under § 2055(a) for the present value of each unitrust interest, determined in accordance with § 20.2055-2(f)(2)(v).

5. With respect to each CLUT, an income tax deduction will be allowed under § 642(c)(1) for the amount actually paid to the charitable beneficiary in a calendar year.

6. The initial funding of each CLUT will not constitute a direct skip under § 2612(c) and therefore generation-skipping transfer tax (GSTT) will not be imposed upon the initial funding of each CLUT.

7. The initial funding of each CLAT will not constitute a direct skip under § 2612(c).

8. A "taxable termination" under § 2612(a) will occur on the expiration of the charitable lead unitrust term of each CLUT.

9. Each CLAT and each CLUT will be recognized as a separate trust for GSTT purposes, and Taxpayer's remaining available GST exemption may be allocated separately to each of the CLUTs.

10. If interest is paid to a CLUT in accordance with § 26.2654-1(a)(1)(ii), then, under § 26.2642-2(b)(2)(i), the denominator of the applicable fraction will be \$B, the pecuniary amount passing to the CLUT, and the denominator will not include the amount of the interest paid.

11. For purposes of allocating Taxpayer's remaining available GST exemption to each CLUT, under § 2642, the denominator of the applicable fraction for each CLUT will be \$B (the amount funding the CLUT) minus the amount allowable as a charitable deduction under § 2055. Assuming an allocation to each CLUT of Taxpayer's remaining available GST exemption in an amount equal to the denominator of the applicable fraction with respect to the CLUT, the inclusion ratio with respect to the CLUT will be zero.

Facts:

Under Paragraph Eighth of Taxpayer's proposed Will, the estate residue passes to the trustees named under a proposed revocable trust agreement.

Paragraph Tenth,C of the Will requires Taxpayer's personal representative first to allocate Taxpayer's "available GST Exemption" on any federal gift tax return with a due date (including extensions) after death only to the extent of any transfer by Taxpayer during life that qualifies as a direct skip (under § 2612(c)). The provision further requires the personal representative to next allocate Taxpayer's "remaining available GST Exemption" equally among the CLUTs created under Taxpayer's revocable trust agreement in a manner such that those trusts will have an inclusion ratio of zero or as close as possible to zero.

Paragraph Tenth,C of the Will defines "available GST Exemption" as the Taxpayer's unused GST exemption available at the time of death (i.e., exemption not previously allocated by Taxpayer or by operation of law to property transferred by Taxpayer before death). The paragraph defines "remaining available GST Exemption" as the GST exemption to which Taxpayer's estate is entitled after the personal representative makes any allocation with respect to lifetime direct skips described above.

The property transferred to the trustees under the trust agreement during the Taxpayer's life and at death will include common stock in Company.

Article IV of the trust agreement provides for the payment after Taxpayer's death, in cooperation with Taxpayer's personal representative and to the extent Taxpayer's probate estate is insufficient, of Taxpayer's debts, expenses, estate and death taxes and specified bequests under the will. Article IV further provides that the amounts allocable to charitable bequests under Article VI, the CLATs under Article VII, and the CLUTs under Article VIII will not be diminished by the payment of gift, GST, estate, inheritance tax, or other death taxes. Article V provides for bequests to individuals and trusts for individuals and Article VI provides for bequests to charities.

Under Article VII of the trust agreement, after Taxpayer's death, the trustee is to distribute \$Y, in cash, or property valued as of the distribution date or dates, to each of charitable lead annuity trusts (CLATs). In addition, the trustee will pay interest to each CLAT on any unpaid balance of the \$Y bequests. Interest will be payable from Taxpayer's date of death until the CLAT is fully funded, and the interest rate will equal 120 percent of the rate under § 7520 for the month of Taxpayer's death, compounded annually.

Article VII,2. provides that of the CLATs, the "A" Trusts, will have a charitable term of 13 years; the other

CLATs, the "B" Trusts, will each have a charitable term of 19 years.

Article VII,1. provides that one of each of the A Trusts and one of each of the B Trusts will be named for one of Taxpayer's named in the trust agreement. Under Article VII,6., at the end of the charitable term of each A and B Trust, the trustee will distribute the trust remainder to the for whom the trust is named, if then living, or if not then living, to a specified trust. However, the remainder interests in the A and B Trusts named for one particular will be distributed to a named trust, whether or not survives the charitable term of the trusts. If any trust that is to receive a distribution at the end of a charitable term is not then in existence, the distribution will lapse and become part of the residue under Article X of the trust agreement.

Under Article VII,3., each trust will pay a guaranteed annuity to Charity, if Charity qualifies as a "charitable organization" (as defined in Article XV discussed below) at the time of payment. If Charity does not so qualify, the annuity will be paid to one organization that qualifies as a charitable organization, as selected by the trustee.

The annuity amounts for the twelve Trusts will be determined under the following formula provided in Article VII,3.:

For the respective charitable terms, the Trustee shall pay such annuity amount in each taxable year of the trust to [Charity] . . . from each of the "A" Trusts, using a term of thirteen (13) years, and from each of the "B" Trusts, using a term of nineteen (19) years, that will produce a present value under § 7520 of the [Internal Revenue] Code for the non-charitable remainder interest related to each of the trusts equal to, or as close as possible as equal to without exceeding, [\$Z];

Article VII,3. further provides that for purposes of this formula, the trustee is to apply under § 7520(a) the lowest available interest rate from among three months, the month of Taxpayer's death or the two months preceding Taxpayer's death, and the annuity amount will be fixed as of the date of Taxpayer's death based upon the applicable interest rate.

Article VII,4. provides that if the initial net fair market value of the trust assets for any of the trusts is incorrectly determined for federal tax purposes, the trustee will pay to the charitable income beneficiary in the case of an underpayment, or

receive back from the beneficiary in the case of an overpayment, an amount equal to the difference between the amount properly payable and the amount actually paid.

Article VII,5. provides that the obligation to pay the annuity amount from each trust commences with the date of Taxpayer's death, but payment may be deferred to the end of the taxable year in which the trust is completely funded. Within a reasonable period from that date, the trustee shall pay to, in the case of a delayed payment or underpayment, or shall receive from the charitable income beneficiary, in the case of an overpayment, the difference between any amounts actually paid to the charities and the amounts payable, plus interest on both amounts.

Article VII, 8.A. provides that the annuity amount shall be distributed from each trust in equal quarterly installments by the last day of each calendar quarter. The annuity amount shall be paid from current income, and to the extent current income shall be insufficient, from accumulated income, and to the extent accumulated income shall be insufficient, from principal (including capital gains).

Article VII,8.B. provides that any net income of a trust for a taxable year in excess of the annuity amount shall be accumulated and may be added to principal from time to time at the discretion of the Trustee.

Under Article VII,8.E., the trustee is prohibited from engaging in any act of self-dealing as defined in § 4941(d) of the Code, from retaining any excess business holdings as defined in § 4943(c) which would subject the trust to a tax under § 4943, from making any investments which would subject the trust to tax under § 4944, and from making any taxable expenditures as defined in § 4945(d); and to the extent required, the trustee will distribute property of any of these trusts at such time and in such manner as not to subject any trust to tax under § 4942.

Under Article VIII, the trustee is to distribute \$B, in cash or in kind, valued as of the distribution date or dates, to each of charitable lead unitrusts (the "C" Trusts) and to each of charitable lead unitrusts (the "D" Trusts). In addition, the trustee will pay interest to each CLUT on any unpaid balance of the \$B bequest. Interest will be paid from Taxpayer's date of death until the CLUT is fully funded, and the interest rate will equal 120 percent of the rate under § 7520 for the month of Taxpayer's death, compounded annually.

Article VIII,2. provides that the C Trusts will each have a charitable term of 29 years, and the D Trusts, will each have a

charitable term of 35 years, commencing on Taxpayer's date of death.

Article VIII,1. provides that one of each of the C Trusts and one of each of the D Trusts will be named for the children of one of Taxpayer's, _____ respectively. Under Article VIII,4., at the end of the charitable term of each C and D Trust, the trustee will distribute the remainder of that trust to the children (or their respective issue if they predecease) for whom the trust is named. If none of the issue of a particular named _____ survive the term of a C or D Trust, then the share that the issue would otherwise have received will be divided equally among the remaining C or D Trusts, for which there are surviving issue of a _____. If none of the C and D Trusts have surviving remainder beneficiaries among the issue of any of the named _____ the remainders will become part of the residue under Article X.

Under Article VIII,3., each CLUT will pay a unitrust amount to Charity, if Charity qualifies as a "charitable organization" at the time of payment. If Charity, or any successor charity as selected by the trustee, does not so qualify, the unitrust amount will be paid to one organization selected by the trustee that does qualify as a charitable organization at the time of payment.

The unitrust amounts for each trust will be determined under the following formula provided in Article VIII,3.:

For the respective charitable terms, the Trustee shall pay for each taxable year of the trust, to [Charity] . . . such percent of the net fair market value of the trust principal valued as of the first day of each taxable year of the trust, which percent remains unchanged throughout the charitable term and is a certain determined percent for the "C" Trusts which trusts last twenty-nine (29) years and a different percent for the "D" Trusts which trusts last 35 years, as will produce a present value under § 7520 for the non-charitable remainder interest related to each of the _____ "C" Trusts and "D" Trusts that is the greater of: (1) an amount equal to, or as close as possible as equal to, but not exceeding, _____ of [Taxpayer's] remaining available GST tax exemption (as is required to be allocated among the "C" Trusts and "D" Trusts in Paragraph TENTH,C, of [Taxpayer's] Last Will and Testament), or (2) [W];. . .

Article VIII,3. further provides that Taxpayer intends that all of Taxpayer's remaining available GST exemption at Taxpayer's death be applied equally to the CLUTs resulting in an inclusion ratio of zero or as close as possible to zero with respect to each trust. Article VIII,3 states that for purposes of this formula, in determining the amount of the unitrust payment, the trustee is to apply the lowest available federal interest rate from among three months, the month of Taxpayer's death or the two months preceding Taxpayer's death, and the unitrust amount will be fixed as of the date of Taxpayer's death based upon the applicable interest rate.

Article VIII,5.B. provides the manner for determining the unitrust amount in the event additional property is contributed to a CLUT after the first day of a taxable year.

Under Article VIII,7.C., the trustee is prohibited from engaging in any act of self-dealing as defined in § 4941(d) of the Code, from retaining any excess business holdings as defined in § 4943(c) which would subject the trust to a tax under § 4943, from making any investments which would subject the trust to tax under § 4944, and from making any taxable expenditures as defined in § 4945(d); and to the extent required, the trustee will distribute property of any of these trusts at such time and in such manner as not to subject any trust to tax under § 4942.

Article VIII,8. provides that the obligation to pay the unitrust amount from each trust commences with the date of Taxpayer's death, but payment may be deferred to the end of the taxable year in which the trust is completely funded. Within a reasonable period from that date, the trustee shall pay to, in the case of a delayed payment or underpayment, or shall receive from the charitable income beneficiary, in the case of an overpayment, the difference between any amounts actually paid to the charities and the amounts payable, plus interest on both amounts. Within a reasonable period between the complete funding of each CLUT and the final determination for federal estate tax purposes of the value of the noncharitable remainder, the trustee will pay to the charitable income beneficiary in the case of an underpayment, or receive back from it in the case of an overpayment, any difference between the amount properly payable and the amount paid plus interest on those amounts.

Article VIII,5.A. provides that the unitrust amount shall be distributed in equal quarterly installments by the last day of each calendar quarter. The unitrust amount shall be paid from current income, and to the extent current income shall be insufficient, from accumulated income, and to the extent accumulated income shall be insufficient, from principal (including capital gains).

Article VIII,6.A. provides that any net income of a trust for a taxable year in excess of the annuity amount shall be accumulated and may be added to principal from time to time at the discretion of the Trustee.

Article IX provides for specific bequests of stock to Taxpayer's .

Under Article X, the residue of the trust assets will be distributed to Charity, if it qualifies as a charitable organization (defined in article XVI.4.), or if it does not, to one or more organizations selected by the trustee that do qualify as charitable organizations.

Article XII,1. provides that any powers granted the trustee under Article XII are exercisable in the trustee's discretion but never in a manner that would jeopardize the qualification of the charitable lead trusts under § 2055.

Article XII,1.A. authorizes the trustee to retain indefinitely any Company common stock, even though the trustee could not properly purchase the stock as a trust investment and retention might violate principles of investment diversification.

Under Article XII,8., Bank 1 is appointed as trustee of each of the CLATs and CLUTs and cannot be removed until three years have elapsed after the initial funding of the trusts. Thereafter, persons specified in Article XII,11., are granted the power to remove and replace the trustee. However, if Bank 1 ceases to serve, any successor trustee must be a bank or trust company that is not related or subordinate, within the meaning of § 672(c), to any beneficiary.

Article XII,11. provides for removal and replacement of the trustee for a specified trust or trusts, subject to Article XII,8. by a majority in number of the then legally competent remainder beneficiaries for the specified trust or trusts. If no remainder beneficiary is then legally competent and the charitable term has expired, then by a majority in number of beneficiaries to whom the trust may or must then be distributed; or, if the charitable term has not expired, then by a majority in number of beneficiaries to whom the trust would be distributable if the term then expired.

Article XIII provides that Bank 1 will serve as trustee, followed by Bank 2, subject to Article XII,8. and 11.

Under Article XVI,4. "charitable organization" is defined as any organization described in §§ 170(c)(2), 2055(a), and 2522(a) of the Internal Revenue Code.

It is represented that under State law, the trustee is not required to pay interest to the trustee of each trust between the date of Taxpayer's death and the date that each CLAT and CLUT is fully funded, even in the case of a delay in funding.

Law and Analysis:

Estate Tax Charitable Deduction:

Section 2055(a) provides that for purposes of the federal estate tax, the value of the taxable estate shall be determined by deducting from the value of the gross estate the amount of all bequests, legacies, devises or transfers to a person or for the use of any corporation 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 stockholder or individual.

Under § 20.2055-2(a), the amount passing to charity must be ascertainable and determinable as of the date of death. Similarly, under § 20.2055-2(b)(1), if the trustee is empowered to divert the property or fund, in whole or in part, to a noncharitable purpose, the deduction is limited to that portion, if any, of the property which is exempt from an exercise of the power.

Under § 2055(e)(2), the estate tax charitable deduction is not allowable where an interest in property (other than an interest described in § 170(f)(3)(B)) passes or has passed from the decedent to a person, or for a use, described in § 2055(a), and an interest (other than an interest which is extinguished upon the decedent's death) in the same property passes or has passed (for less than an adequate and full consideration in money or money's worth) from the decedent to a person, or for a use, not described in § 2055(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 § 20.2055-2(e)(1)(i), in the case of decedents dying after December 31, 1969, where an interest in property passes from the decedent for charitable purposes and an interest in the same property passes from the decedent for private purposes, no deduction is allowed under § 2055(a) for the value of the

interest passing for charitable purposes unless the interest is a "deductible interest".

Under § 20.2055-2(e)(2)(vi)(a), the term "deductible interest" includes a guaranteed annuity interest. A "guaranteed annuity interest" is a right 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 or for the life or lives of an individual or individuals, each of whom must be living at the date of death of the decedent and can be ascertained at such date. An amount is determinable if the exact amount which must be paid under the conditions specified in the instrument of transfer can be ascertained as of the appropriate valuation date.

Under § 20.2055-2(e)(2)(vi)(b), a charitable interest is a guaranteed annuity interest only if it is a guaranteed annuity interest in every respect. Under § 20.2055-2(e)(2)(vi)(d), where a guaranteed annuity interest is in trust, the instrument may provide that income of the trust in excess of the amount required to pay the guaranteed annuity interest shall be paid to or for the use of a charity. Nevertheless, the amount of the deduction is limited to the fair market value of the guaranteed annuity interest. Under § 20.2055-2(f)(2)(iv), a deduction will be allowed under § 2055 only for the minimum amount it is evident the charity will receive. Thus, if the date of death value of the guaranteed annuity interest exceeds the date of death value of the trust assets, the allowable deduction is limited to the date of death value of the trust assets.

Under § 20.2055-2(e)(2)(vii)(a), the term "deductible interest" includes a unitrust interest. A "unitrust interest" is a right to receive payment, not less often than annually of a fixed percentage of the net fair market value, determined annually, of the property which funds the unitrust interest. The unitrust interest may be paid for a specified term, or the life or lives of named individuals, each of whom must be living at the creation of the trust.

Under § 20.2055-2(e)(2)(vii)(b), a charitable interest is a unitrust interest only if it is a unitrust interest in every respect. Under § 20.2055-2(e)(2)(vii)(e), where a unitrust interest is in trust, the instrument may provide that income of the trust in excess of the amount required to pay the unitrust interest shall be paid to or for the use of a charity. Nevertheless, the amount of the deduction is limited to the fair market value of the unitrust interest. Under § 20.2055-2(f)(2)(v), 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.

With respect to the A Trusts and the B Trusts, the charitable annuity will be determined pursuant to a specified formula. The annuity amounts will be ascertainable and determinable as of Taxpayer's date of death, because as of that date, all variables in the formula contained in Article VII,3. for determining the charitable annuity amounts will be fixed and determinable.

Accordingly, we conclude that the charitable interest in each CLAT created under Article VII of the proposed trust agreement will constitute a guaranteed annuity interest within the meaning of § 2055(e)(2)(B) and § 20.2055-2(e)(2)(vi). Therefore, on the Taxpayer's death, an estate tax charitable deduction will be allowed under § 2055(a) for the present value of each guaranteed annuity interest, determined in accordance with § 20.2055-2(f)(2)(iv).

The amount of the unitrust interest payable with respect to the C Trusts and the D Trusts will be determined pursuant to a specified formula. The unitrust amount will be ascertainable and determinable as of Taxpayer's date of death, because as of that date, all variables in the formula contained in Article VIII,3. for determining the charitable unitrust amounts will be fixed and determinable.

Accordingly, we conclude that the charitable interest in each CLUT created under Article VIII of the proposed trust agreement will constitute a unitrust interest within the meaning of § 2055(e)(2)(B) and § 20.2055-2(e)(2)(vii). Therefore, on the Taxpayer's death, an estate tax charitable deduction will be allowed under § 2055(a) for the present value of each unitrust interest, determined in accordance with § 20.2055-2(f)(2)(v).

Income Tax Charitable Deduction:

Section 642(c)(1) provides the general rule that, in computing its taxable income, a trust is allowed a deduction for any amount of gross income, which pursuant to the terms of the governing instrument, is paid during the taxable year 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 CLATs and CLUTs created under the proposed trust agreement have unrelated business income under § 681(a), and except to the extent that contributions are nondeductible under §§ 508(d) or 4948(c)(4), each CLAT and each CLUT will be allowed a deduction in accordance with § 642(c)(1) for amounts of gross income paid to the charitable beneficiary during that taxable year, or the close of the following taxable year, if the trustee makes an election under § 1.642(c)-1(b). 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.

Generation-Skipping Transfer Tax:

Section 2601 imposes a tax on every generation-skipping transfer (GST) made after October 22, 1986.

Section 2611 defines a "generation-skipping transfer" as either a direct skip, a taxable termination, or a taxable distribution.

Section 2612(a)(1) provides that the term "taxable termination" means the termination (by death, lapse of time, release of power, or otherwise) of an interest in property held in trust unless--(A) immediately after the termination, a non-skip person has an interest in the property, or (B) at no time after the termination may a distribution (including distributions on termination) be made from the trust to a skip person.

Section 2612(b) provides that a "taxable distribution" means any distribution from a trust to a skip person (other than a taxable termination or a direct skip).

Section 2612(c)(1) provides that the term "direct skip" means a transfer subject to a tax imposed by chapter 11 or 12 of an interest in property to a skip person.

Section 2613(a) provides that the term "skip person" means--

(1) a natural person assigned to a generation that is 2 or more generations below the generation assignment of the transferor, or (2) a trust--

(A) if all "interests" are held by skip persons, or

(B) if--(i) there is no person holding an interest in the trust, and (ii) at no time after the transfer may a

distribution (including distributions on termination) be made from the trust to a non-skip person.

Section 2613(b) provides that the term "non-skip person" means any person who is not a skip person.

Section 2631 provides for a GST exemption of \$1,000,000 (adjusted for inflation as provided in § 2631(c)), which may be allocated by the individual, or the individual's executor, to any property of which the individual is the transferor for GST tax purposes under § 2652(a). Under § 2631(b), an allocation, once made, is irrevocable.

Section 2632(a) states that any allocation of an individual's GST exemption may be made at any time on or before the date prescribed for filing the individual's estate tax return (including extensions).

In general, the generation-skipping transfer tax is computed by multiplying the taxable amount by the "applicable rate." The applicable rate is the highest federal estate tax rate multiplied by the inclusion ratio with respect to the transfer. Under § 2642(a), the inclusion ratio is the excess (if any) of 1 over the applicable fraction determined for the trust from which such transfer is made. The applicable fraction is a fraction - (A) the numerator of which is the amount of the GST exemption allocated to the trust and (B) the denominator of which is - (i) the value of the property transferred to the trust reduced by (ii) the sum of (I) the federal estate tax or state death tax actually recovered from the trust attributable to such property, and (II) any charitable deduction allowed under § 2055 and § 2522 with respect to the such property.

Under § 2642(b)(2)(B), any allocation of GST exemption to property transferred as a result of the transferor's death is effective as of the date of death.

Section 26.2642-2(b)(2)(i) of the Generation-Skipping Transfer Tax Regulations provides that in determining the denominator of the applicable fraction with respect to a pecuniary bequest, if a pecuniary payment is satisfied with cash, the denominator is the pecuniary amount. If property other than cash is used to satisfy a pecuniary payment, the denominator of the applicable fraction is the pecuniary amount only if payment must be made with property on the basis of the value of the property on --

(A) The date of distribution; or

(B) A date other than the date of distribution, but only if the pecuniary payment must be satisfied on a basis that

fairly reflects net appreciation and depreciation (occurring between the valuation date and date of distribution) in all of the assets from which the distribution could have been made.

Under § 2651(f)(3), any organization described in § 511(a)(2), any charitable trust described in § 511(b)(2), and any governmental entity, is assigned to the transferor's generation.

Under § 2652(a), the term "transferor" means, in the case of any property subject to the estate tax, the decedent.

Section 2652(c)(1) provides that, for purposes of Chapter 13, a person has an interest in the property held in trust if (at the time the determination is made) the person--

(A) has a right (other than a future right) to receive income or corpus from the trust,

(B) is a permissible current recipient of income or corpus from the trust and is not described in § 2055(a), or

(C) is described in § 2055(a) and the trust is --(i) a charitable remainder annuity trust, (ii) a charitable remainder unitrust within the meaning of § 664, or (iii) a pooled income fund within the meaning of § 642(c)(5).

Section 2654(b) provides that, for purposes of Chapter 13--

(1) the portions of a trust attributable to transfers from different transferors are treated as separate trusts, and

(2) substantially separate and independent shares of different beneficiaries in a trust are treated as separate trusts.

Except as provided above, a single trust will not be treated as 2 or more trusts.

Under § 26.2654-1(a)(1)(ii), if a person holds the current right to receive a mandatory (nondiscretionary and noncontingent) payment of a pecuniary amount at the death of the transferor from an inter vivos trust that is includible in the transferor's gross estate, or a testamentary trust, the pecuniary amount is a separate and independent share if the trustee is required to pay "appropriate interest," under § 26.2642-2(b)(4)(i), to the person and if payable in kind, the pecuniary amount is payable on the basis of the date of distribution value.

Section 26.2642-2(b)(4)(i) provides that "appropriate interest" means that interest must be payable from the date of

death of the transferor to the date of payment at a rate (A) at least equal to (1) the statutory rate of interest, if any, applicable to pecuniary bequests under the law of the State whose law governs the administration of the estate or trust; or (2) if no such rate is indicated under applicable State law, 80 percent of the rate that is applicable under § 7520 at the transferor's death; and (B) not in excess of the greater of (1) the statutory rate of interest, if any, applicable to pecuniary bequests under the law of the State whose law governs the administration of the estate or trust; or (2) 120 percent of the rate that is applicable under § 7520 at the transferor's death.

At Taxpayer's death, the trustee will fund each of the CLUTs with \$B. A unitrust interest will be paid to Charity during the charitable term of the CLUT. On termination of the charitable term, the remainder will be distributed among _____ of Taxpayer. If Charity does not qualify as a charitable organization under §§ 170(c)(2), 2055(a), and 2522, then the unitrust amount will be paid to one other specified charity that does so qualify.

Under § 2651(f) Charity is assigned to the same generation as the generation of the transferor, and Charity has an interest in each CLUT as defined in § 2612(c). The CLUTs will not be skip persons under § 2613. Accordingly we conclude that the proposed pecuniary bequests to the _____ CLUTs will not constitute direct skips, and therefore no generation-skipping transfer tax will be imposed upon the transfer to the CLUTs under the terms of the trust. For similar reasons, we conclude that the proposed pecuniary bequests to the _____ CLATs will not constitute direct skips.

Under § 2612(a), a taxable termination occurs upon the termination of an "interest" in property held in trust. In the instant case, Charity will have an interest, as defined in § 2652(c), in each CLUT during the term of the charitable unitrust of the CLUT. At the end of the charitable term, Charity's interest will terminate and only skip persons, Taxpayer's _____ or their issue, will have interests in or rights to distributions from each CLUT. Thus, we rule that a "taxable termination" under § 2612(a) will occur on the expiration of the term of the charitable lead unitrust of each CLUT.

Under Article VII,3., at Taxpayer's death, each CLAT is to be funded with \$Y, a pecuniary amount. Under Article VIII, 3., at Taxpayer's death, each CLUT is to be funded with \$B, a pecuniary amount. Under Article VII,3. and Article VIII,3., the pecuniary amount is payable in cash, or in kind based on date of distribution values. Further, the trustee is required to pay interest to the respective CLAT or CLUT between the date of death

and the date the trust is fully funded equal to 120 percent of the § 7520 interest rate for the month of Taxpayer's death. It is represented that State law does not require the payment of interest between the date of death and date of funding. The interest payable will be "appropriate interest" under § 26.2642-2(b)(4)(i), and the pecuniary amount paid to each CLAT and each CLUT will be a separate and independent share, under § 26.2654-1(a)(1)(ii), for GSTT purposes. Consequently, we conclude that each bequest to a CLAT and each bequest to a CLUT will be recognized as a separate share for GSTT purposes so that Taxpayer's remaining available GST exemption may be allocated separately to each of the CLUTs.

Pursuant to Article VIII,3., and as required under § 26.2642-2(b)(2)(i), any payment in kind in satisfaction of a pecuniary amount will be made based on the date of distribution value of the property. Accordingly we rule that, under § 26.2642-2(b)(2)(i), with respect to each CLUT, if funded in cash, or in kind, the denominator of the applicable fraction will be \$B, the pecuniary amount payable to the CLUT. The denominator will not include the amount of the interest paid (if funded in cash).

Finally, we rule that for purposes of allocating Taxpayer's remaining available GST exemption to each CLUT, under § 2642, the denominator of the applicable fraction for each CLUT will be \$B (the amount passing to each CLUT under the terms of the trust) minus the amount allowable as a charitable deduction under § 2055 with respect to the CLUT. Assuming an allocation to each CLUT of Taxpayer's remaining available GST exemption in an amount equal to the denominator of the applicable fraction for the CLUT, the inclusion ratio for the CLUT will be zero.

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 particular, we express no opinion as to whether or not the charitable beneficiary designated in the proposed trust agreement is described in §§ 170(b)(1)(A), 170(c)(2)(B), 2055(a), and 2522(a).

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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

Enclosure

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