

Internal Revenue Service

Department of the Treasury

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Date:

April 19, 2000

X =

A =

B =

C =

D =

Agreement =

Bank =

Trust 1 =

Trust 2 =

Trust 3 =

Trust 4 =

D1 =

Year 1 =

Dear :

This letter responds to a letter dated October 11, 1999, and subsequent correspondence submitted by you as X's authorized representative on behalf of X, requesting rulings under §§ 671 and 4941 of the Internal Revenue Code.

The information submitted states that X executed Agreement on D1 of Year 1, creating Trust 1, Trust 2, and Trust 3 (Trusts). The trustee of Trusts is Bank.

Article I, section (A), subsection (7), of Agreement defines "presumptive remainderman" as to a particular one of Trusts, as the person whose name is in the title of such one of Trusts. The presumptive remainderman of each of the Trusts is set forth in Schedule "A" of Agreement, which is annexed to and forms a part of Agreement.

Article I, section (A), subsection (8), of Agreement defines "qualified charitable organization" as an organization that is described in §§ 170(c), 2055(a), and 2522(a), and that is an organization exempt from taxation under § 501(a) as an organization described in § 501(c)(3) on the date that any distribution is to be made to it under Agreement.

Article I, section (A), subsection (9), of Agreement defines "related person," as to an individual, as a person who is related or subordinate to such individual within the meaning of § 672(c) (determined as though such individual were the grantor, as that term is used in § 672(c).

Article I, section (A), subsection (12), of Agreement defines "trust termination date" as the day before the twentieth anniversary of the trust creation date.

Article II, section (A), of Agreement provides that X assigns, transfers, and delivers to the trustees the property listed on Schedule "B" (the "initial trust fund"). The trustees agree to hold such property in trust and to manage and dispose of it in accordance with the provisions of Agreement.

Article II, section (B), of Agreement provides, in part, that the trustees shall divide the initial trust fund into three equal shares, referred to as Share 1, Share 2, and Share 3, respectively. These are to be held and administered as follows: (1) Share 1 shall constitute the trust fund of a separate charitable lead trust to be known as Trust 1, which shall be held upon the terms set forth in Article IV; (2) Share 2 shall constitute the trust fund of a separate charitable lead trust to be known as Trust 2, which shall be held upon the terms set forth in Article IV; and (3) Share 3 shall constitute the trust fund of a separate charitable lead trust to be known as Trust 3, which shall be held upon the terms set forth in Article IV.

Article III of Agreement provides that Agreement and Trusts may not be altered, amended, revoked, or terminated by X, in whole or in part. The trustees shall have the limited power to amend set forth in Article IV, section (J).

Article IV, section (A), of Agreement provides, in part, that (1) during each taxable year of Trusts the trustees shall

pay to such qualified charitable organizations as the "charitable appointer" shall direct an annuity amount determined in accordance with the following graduated formula: in the first and second taxable years of the Trusts, three percent of the initial fair market value of the trust fund valued on the trust creation date (the "initial value"), and in each taxable year thereafter, an amount equal to the previous year's annuity amount multiplied by a factor of one and one hundred thirty-three thousandths; and (2) the annuity amount shall be paid from income, and, to the extent that income is not sufficient, from principal. Any income of the Trusts for a taxable year in excess of the annuity amount shall be added to principal.

Article IV, section (C), subsection (1), of Agreement provides that (a) during X's lifetime, D shall be the "charitable appointer" of the Trusts until such time as a new "charitable appointer," designated by D pursuant to the provisions of Article IV, section (C), subsection (1), paragraph (b), accepts such position by written instrument delivered to the trustees and the presumptive remainderman; (b) at any time and from time to time during X's lifetime, D (whether or not then acting as the "charitable appointer") may designate, in the manner described in Article IV, section (C), subsection (5), one individual, or a series of individuals to serve singly, in succession and in the order named, in each case other than X, as the "charitable appointer"; and (c) D, at any time and from time to time during X's lifetime (whether or not then acting as the "charitable appointer"), may designate an individual other than X who shall have the power to designate a new "charitable appointer" as provided in Article IV, section (C), subsection (1), paragraph (b), in the event that D shall have temporarily or permanently relinquished such power, or if D is under a disability or not then living. Any such designation by D shall be in writing, signed by D and delivered to the presumptive remainderman and to each of the trustees. If D so designates an individual pursuant to Article IV, section (C), subsection (1), paragraph (c), any reference to D shall be construed as a reference to the individual so designated by D.

Article IV, section (C), subsection (2), of Agreement provides that, upon and following X's death, the "charitable appointer" of the Trusts shall be the individual designated on Schedule "A" (with respect to any one of the Trusts), or, if such individual dies before X or is under a disability at X's death or executes a written instrument relinquishing the right to serve as the "charitable appointer," the "charitable appointer" of that one of Trusts shall be the successor (if any) such individual designated pursuant to Article IV, section (C), subsection (3).

Article IV, section (C), subsection (3), of Agreement provides that the individual named on Schedule "A," if not then under a disability, may designate one or more successor "charitable appointers" by delivering a written designation to the trustees, at any time and from time to time before such individual ceases to serve as the "charitable appointer" of the Trusts (including any time before he or she begins to serve as the "charitable appointer"). Such designation shall take effect on the date specified, but in no event prior to X's death.

Article IV, section (C), subsection (4), of Agreement provides that, if at any time no "charitable appointer" of one of the Trusts is serving and no successor designated pursuant to any of the preceding subsections of Article IV, section (C), is willing and able to serve, the trustees shall serve as "charitable appointer."

Article IV, section (D), of Agreement provides, in part, that the Trusts shall terminate on the trust termination date. Upon such termination, the trustees shall distribute the trust fund to the trustees of that trust held for the benefit of the presumptive remainderman pursuant to the provisions of Trust 4 or, if no such trust is then so held, the trustees shall distribute the trust fund pursuant to the provisions of Article IV, section (E), of Trust 4, as if the trust fund were the trust fund of a trust held pursuant to the provisions of Trust 4 whose beneficiary (as defined in Article IV of Trust 4) is the presumptive remainderman and as if the beneficiary died on the trust termination date.

Article IV, section (E), of Agreement provides that, prior to the trust termination date, the trustees are prohibited from engaging in any act of self-dealing as defined in § 4941(d), from retaining any excess business holdings as defined in § 4943(c) which would subject the Trusts to tax under § 4943, from making any investments which would subject the Trusts to tax under § 4944, and from making any taxable expenditures as defined in § 4945(d). The trustees shall make distributions at such time and in such manner as not to subject the Trusts to tax under § 4942.

Article IV, section (H), of Agreement provides that (1) no payment shall be made from any of Trusts to any beneficiary other than a qualified charitable organization prior to the trust termination date, and (2) no federal estate taxes, state death taxes, or any other estate, death or inheritance taxes regarding any of Trusts shall be allocated to or be recoverable from any of Trusts. X imposes an obligation on X and on X's estate to pay any such taxes from sources other than the Trusts, and agrees to

so provide in X's will or otherwise. This provision may be enforced by the trustees.

Article IV, section (J), of Agreement provides that the trustees are authorized, by an instrument in writing, duly executed and acknowledged by them and delivered to the "presumptive remainderman" of any of Trusts, to amend the provisions of the Trusts at any time and in whatever manner they shall deem necessary or desirable to ensure the continued and efficient administration of Trusts as charitable lead trusts, gifts to which are deductible under § 2522, and for no other purpose; provided, however, that no amendment of the Trusts shall be valid if, as a result of such amendment, (i) the annuity amount described in Article IV, paragraph (A), would be reduced, (ii) X's federal gift tax charitable deduction would be reduced, (iii) X is granted any power which would render the gift set forth in Schedule "A" incomplete, in whole or in part, (iv) all or any portion of the initial trust fund would be includable in the gross estate of X for federal estate tax purposes, (v) X would be treated as the owner of any portion of the trust fund of any of Trusts for purposes of § 671, (vi) the powers granted to the trustees by Article IV, paragraph (J), are expanded, or (vii) the trust fund of any of Trusts is payable upon the trust termination date to anyone other than an issue of X if any issue of X is living on the trust termination date.

Article VIII, section (A), subsection (1), of Agreement provides that if, at any time or from time to time, the presumptive remainderman of one of Trusts (if not then under a disability) may designate one or more persons other than X to serve as additional and/or successor trustees of such one of Trusts.

Article VIII, section (A), subsection (2), of Agreement provides that, at any time when the presumptive remainderman of one of Trusts is under a disability, has temporarily or permanently relinquished the power to designate such trustees, or is not living, D (or such successor as D shall have designated pursuant to a written instrument) may designate one or more persons other than X to serve as additional and/or successor trustees of such one of Trusts.

Article VIII, section (A), subsection (3), of Agreement provides that, at any time when (i) the presumptive remainderman of one of Trusts is under a disability, has temporarily or permanently relinquished the power to designate such trustees, or is not living, and (ii) D (or such successor as D shall have designated pursuant to a written instrument) is under a disability, has temporarily or permanently relinquished the power to designate such trustees, or is not living (or if no such

successor to D was so designated), the trustees of that one of Trusts may designate one or more persons other than X to serve as additional or successor trustees.

Article VIII, section (A), subsection (4), of Agreement provides that, notwithstanding any other provision of Article VIII, (i) no one of Trusts shall have more than three persons serving together as co-trustees at any given time and at all times during X's lifetime, no more than half of the trustees of any one of Trusts may be related persons as to X and (ii) any designation of an additional or successor trustee or trustees of one of Trusts shall not be effective if such designation would result in a change of situs of such one of Trusts (absent an affirmative election by the trustees to change such situs).

Article IX of Agreement provides that, notwithstanding any contrary provision of Agreement, (i) no interest of a beneficiary of any of Trusts, whether income or principal, may be assigned, transferred, encumbered or otherwise disposed of, voluntarily or involuntarily, before its payment or distribution to such beneficiary by the trustees; (ii) no disposition, charge, or encumbrance of the income or principal of any of Trusts, or any part thereof, by way of anticipation, alienation, or otherwise by a beneficiary shall be valid and binding upon the trustees; and (iii) no income or principal of any of Trusts, or any part thereof, shall be liable to any claim of any creditor. This section shall apply notwithstanding any contrary provision of law.

Schedule "A" of Agreement provides that each of the following individuals is (i) the designated "charitable appointer" after X's death and (ii) the "presumptive remainderman" of the trust indicated: A as to Trust 1, B as to Trust 2, and C as to Trust 3.

X requests the following rulings:

1. None of Trusts will be treated as owned by X under any of §§ 671 through 677 if A, B, or C acts as the "charitable appointer" of any of Trusts (or had the power to designate successor "charitable appointers," and such power did not preclude A, B, or C from naming themselves as "charitable appointer.")

2. The designation of a private foundation, within the meaning of § 509(a), by the "charitable appointer" of any of Trusts as the recipient of all or any portion of the annuity amount for a particular year will not be an act of self-dealing under § 4941, merely because A, B, or C is the "charitable

appointer" and is also an officer, director, or trustee of such designated private foundation.

RULING 1

Section 671 provides that where it is specified in subpart E that the grantor or another person shall be treated as the owner of any portion of a trust, there shall then be included in computing the taxable income and credits of the grantor or the other person those items of income, deductions, and credits against tax of the trust which are attributable to that portion of the trust to the extent that such items would be taken into account under chapter 1 in computing taxable income or credits against the tax of an individual.

Sections 673 through 677 specify the circumstances under which the grantor is treated as the owner of a portion of a trust.

Section 674(a) provides that the grantor shall be treated as the owner of any portion of a trust in respect of which the beneficial enjoyment of the corpus or the income therefrom is subject to a power of disposition, exercisable by the grantor or a nonadverse party, or both, without the approval or consent of any adverse party.

Section 674(b)(4) provides that § 674(a) shall not apply to a power, regardless of by whom held, to determine the beneficial enjoyment of the corpus or the income therefrom if the corpus or income is irrevocably payable for a purpose specified in § 170(c) (relating to definition of charitable contributions) or to an employee stock ownership plan (as defined in § 4975(e)(7)) in a qualified gratuitous transfer (as defined in § 664(g)(1)).

Section 1.674(a)-1(b) of the Income Tax Regulations provides that, in general terms, the grantor is treated as the owner of the portion of a trust if he or a nonadverse party or both has a power to dispose of the beneficial enjoyment of the corpus or income.

Section 1.674(a)-1(b)(1)(iii) provides that § 1.674(a)-1(b) does not apply to a power to choose between charitable beneficiaries or to affect the manner of their enjoyment of a beneficial interest.

Based solely on the facts and representations submitted, we conclude that none of Trusts will be treated as owned by X under any of §§ 671 through 677 if A, B, or C acts as the "charitable appointer" of any of Trusts (or has the power to designate successor "charitable appointers," and such power does not

preclude A, B, or C from naming themselves as "charitable appointer.")

RULING 2

Section 4941 imposes an excise tax on any direct or indirect act of self-dealing between a private foundation and a disqualified person. The tax is imposed on the disqualified person and, in certain situations, a tax is also imposed on the foundation manager or managers participating in the act or acts.

Section 4941(d)(1) provides, in part, that the term self-dealing includes the direct or indirect sale, exchange, or leasing of property between a private foundation and a disqualified person; furnishing of goods, services, or facilities between a private foundation and a disqualified person; payment of compensation (or payment or reimbursement of expenses) by a private foundation to a disqualified person; and transfer to, or use by or for the benefit of a disqualified person of the income or assets of a private foundation.

Section 53.4941(d)-2(f)(2) of the Foundation and Similar Excise Taxes Regulations states that the fact that a disqualified person receives an incidental or tenuous benefit from the use by a foundation of its assets or income will not, by itself, make such use an act of self-dealing. For example, the regulation provides that a grant by a private foundation to a § 509(a) organization will not be an act of self-dealing merely because one of the § 509(a) organization's officers, directors, or trustees is also a manager or substantial contributor of the trust.

Section 4946(a)(1) provides that the definition of disqualified person includes, in pertinent part: (i) a substantial contributor to the foundation; (ii) a foundation manager; (iii) a member of the family of a disqualified person, including a spouse, child, grandchild, and a spouse of a child or grandchild; and (iv) a corporation of which disqualified persons own more than thirty five percent of the total combined voting power.

Section 4947(a)(2) provides that a charitable lead trust is subject to certain private foundation provisions contained in §§ 507, 508(e), 4941, 4943, 4944, and 4945.

We conclude that under § 4946(a)(1), A, B, and C are disqualified persons with respect to Trusts since they are foundation managers. A, B, and C, as "charitable appointers," will designate the charitable beneficiaries of the annuity amount. Only organizations described in §§ 170(c), 2055(a), and

2522(a) may be designated as recipients. A, B, and C may designate a charitable beneficiary of which any or all of them are officers, directors, or trustees. Any benefit to them merely because of such designation will be incidental or tenuous. See § 53.4941(d)-2(f)(2).

The designation of a charitable beneficiary is distinguishable from the transactions that are normally considered self-dealing under § 4941. Such transactions generally include the provision of personal services, sale or exchange of property, loans, leases, or payment of compensation. There is no inherent violation of the self-dealing rules under § 4941 in the transactions described above.

Therefore, we further conclude that the designation by A, B, or C, as "charitable appointers," of organizations described in §§ 170(c), 2055(a), and 2522(a) with respect to which any or all of them are officers or directors as the recipients of the annuity amount, does not solely by itself establish that an act of self-dealing within the meaning of § 4941 has taken place.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any provision of the Code.

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

Pursuant to a power of attorney on file with this office, copies of this letter are being sent to X and to X's other authorized representative.

Sincerely yours,
J. THOMAS HINES
Acting Branch Chief Branch 2
Office of the Assistant Chief Counsel
(Passthroughs and Special Industries)

Enclosures: 2
Copy of this letter
Copy for Section 6110 purposes