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DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Date: MAR 09 2000

Contact Person:

ID Number:

Telephone Number:

OP:E:EO:T3

UIL Nos.

4941.04-00
4943.03-00
4943.04-02
4944.00-00
4947.02-00

Employer Identification Number:

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Dear Applicant:

This letter responds to the request of V dated July 22, 1999 for rulings regarding the establishment and funding of split-interest trusts in compliance with chapter 42 of the Internal Revenue Code.

Facts:

A is the spouse of B. Each is the Settlor of a trust that is revocable during his or her lifetime ("Revocable Trust"). Each Revocable Trust becomes irrevocable upon the Settlor's death. If a Settlor dies first, then his or her Revocable Trust directs the creation of one or two Marital Trusts and a Family Trust, and directs that the assets of his or her Revocable Trust be placed in the Marital and Family Trusts to take advantage of deductions, exemptions, and credits for estate tax purposes. The principal and income of such trusts may be used for the support of the surviving spouse and the children of A and B during the life of the surviving spouse.

A's Revocable Trust directs the creation of a charitable lead unitrust and a charitable lead annuity trust (the two trusts are referred to collectively as the "Charitable Lead Trust") upon the death of the surviving spouse. The Charitable Lead Trust will be described in section 4947(a)(2) of the Code but not section 4947(b)(3). After the death of the surviving spouse, it is contemplated that the same Trustee will

govern the Revocable Trusts, Marital Trusts, Family Trust, and Charitable Lead Trust. The Trustee is expected to be F (a child of A and B), and the alternate Trustee is G (an officer of X).

Both Revocable Trusts provide that the Charitable Lead Trust will be funded with certain assets from the Revocable Trusts and the Marital and Family Trusts. The term of the Charitable Lead Trust shall commence on the date of death of the surviving spouse, after which a charitable deduction will be taken for the funding of the Charitable Lead Trust. The obligation of the Charitable Lead Trust to make payments to charity commences on such date, although full payments may be deferred until complete funding occurs, in which case back payments with interest will be made. The trustee of the Charitable Lead Trust selects the charitable beneficiaries, which may include V, a private foundation formed by A and B.

X is an investment company wholly owned by A's Revocable Trust, and thus a disqualified person with respect to the Charitable Lead Trust. X's investments include working interests in oil and gas exploration and production. It is expected that the assets available to fund the Charitable Lead Trust will consist primarily of the stock of X (or X's assets, if X is liquidated) and interests in other entities of a similar nature that would constitute excess business holdings in the hands of the Charitable Lead Trust. Such stock or assets are expected to be sold after the death of the second spouse to provide funds for the Charitable Lead Trust. If stock is sold, the seller will be the trustee of A's Revocable Trust (or the Marital or Family Trusts); if assets are sold, the seller will be X. Purchasers of X stock or X's assets may include the following disqualified persons: the children of A and B (namely, C, D, E, and F), as individuals or as trustees of their revocable trusts; and W, Y, and Z. W is a corporation wholly owned by the revocable trust of F. Y is a partnership owned by W and the revocable trusts of C, D, and E. Z is a partnership owned primarily by C, D, E, F, and other disqualified persons. The Revocable Trust provides the Trustee, in order to avoid chapter 42 taxes, with a power to sell trust property under the following conditions:

(i) The sale is for fair market value

(ii) The value is determined by a competent and qualified appraiser

(iii) The sale is approved by the probate court with jurisdiction over the Revocable, Marital, and Charitable Lead Trusts

(iv) The sale is completed prior to the Charitable Lead Trust becoming subject to section 4947 of the Code

(v) If Notes are received in consideration, the Notes will be negotiable instruments under State law, will be payable over a 10-year term, will bear interest at the percentage payment rate of the charitable lead annuity trust or unitrust that ultimately receives the note, and will be secured by the assets sold; and the sum of the cash and Notes received will have the same appraised fair market value as the assets sold

(vi) The Charitable Lead Trust must receive assets at least as liquid as those sold

(vii) The buyer may be a disqualified person under section 4946 of the Code as long as the sale does not constitute self-dealing under section 4941

(viii) The transaction must be approved in a letter ruling issued by the Internal Revenue Service

Rulings Requested:

1. For purposes of section 53.4947-1(b)(2)(iv)(A) of the regulations, the Charitable Lead Trust established under A's Revocable Trust will not be deemed to become a Split Interest Trust subject to section 4947(a)(2) of the Code and the provisions of sections 4941, 4943, 4944, and 4945 until a reasonable time has elapsed after the death of both A and B, so that the Trustees of both of their Trusts may take the necessary steps after the death of the last spouse to die to establish the Charitable Lead Trust, obtain a determination of federal estate tax, and allow the Trustee to obtain approval of the sale of such excess business holdings to a disqualified person from the Probate Court.

2. The Trustee of A's Revocable Trust and B's Revocable Trust will have a period of up to five years, commencing on the date on which the last spouse dies, within which to cause the Charitable Lead Trust, which is to come into existence at the death of the last spouse to die, to dispose of all excess business holdings.

3. The retention of Notes of a disqualified person by the Charitable Lead Trust will not constitute an excess business holding, for such Notes will not constitute an interest in a corporation which creates a potential for becoming excess business holdings in the hands of a private foundation.

4. Following the proposed sale of the stock of X (or if liquidated, its business assets, i.e. oil and gas working interests) to a disqualified person for cash and Notes of the disqualified person (assuming such sale is first approved by the Probate Court of M County), and assuming all procedures regarding the sale are otherwise complied with in accordance with the provisions of section 53.4941-1(d)-1(b), and a favorable letter ruling has been received from the National Office of the Internal Revenue Service, the receipt and retention of the Notes of the disqualified person or persons by the Trustee of the Charitable Lead Trust will not be deemed a jeopardy investment in the hands of the Charitable Lead Trust.

5. The proposed sale by the Trust of its excess business holdings to one or more disqualified persons for part cash and part Notes will not be deemed a prohibited act of self-dealing, and the subsequent retention of the Notes by the Charitable Lead Trust, and the subsequent payment of principal and interest on the Notes by disqualified persons will not constitute an act of self-dealing by the Trustee of the Charitable Lead Trust or the payors of the Notes who are disqualified persons, provided that:

(i) The selling price is at least equal to the appraised fair market value of the excess business holdings in the hands of the Charitable Lead Trust, and such fair market value is determined by a qualified appraiser.

(ii) The terms of sale, including price and terms of payment, are approved by the Court with jurisdiction over the Trust.

(iii) The proposed sale has been approved by the IRS National Office as not constituting an act of self-dealing.

(iv) The sale is completed before the Charitable Lead Trust becomes subject to the provisions of section 4947 of the Code.

(v) The terms of sale result in the Split Interest Trust receiving an interest or expectancy at least as liquid as the excess business holdings sold.

Law:

Section 4941(a) of the Code imposes an excise tax on disqualified persons for each act of self-dealing between a disqualified person and a private foundation.

Section 4941(d)(1) of the Code defines self-dealing as including 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 4943(a)(1) of the Code imposes an excise tax on a private foundation's excess business holdings in a business enterprise during any tax year.

Section 4943(c)(6) of the Code provides that if there is a change in the holdings in a business enterprise (other than by purchase by the private foundation or by a disqualified person) which causes the private foundation to have--

(A) excess business holdings in such enterprise, the interest of the foundation in such enterprise (immediately after such change) shall (while held by the foundation) be treated as held by a disqualified person (rather than by the foundation) during the 5-year period beginning on the date of such change in holdings; or

(B) an increase in excess business holdings in such enterprise (determined without regard to subparagraph (A)), subparagraph (A) shall apply, except that the excess holdings immediately preceding the increase therein shall not be treated, solely because of such increase, as held by a disqualified person (rather than by the foundation).

Section 4944(a)(1) of the Code imposes an excise tax on a private foundation's making of an investment in such a manner as to jeopardize the carrying out of any of its exempt purposes.

Section 4946(a)(1) of the Code provides that a "disqualified person," with respect to a private foundation, includes

(A) a substantial contributor (including a creator of a trust)
(B) a foundation manager
(C) an owner of more than 20% of a corporate, partnership, or trust substantial contributor
(D) a family member (including a child or grandchild) of an individual described above
(E) a corporation of which persons described above own more than 35% of the total combined voting power
(F) a partnership in which persons described in (A)-(D) own more than 35% of the profits interest

(G) a trust or estate in which persons described in (A)-(D) hold more than 35% of the beneficial interest

(H) only for purposes of section 4943, a private foundation—

(i) which is effectively controlled (directly or indirectly) by the same person or persons who control the private foundation in question, or

(ii) substantially all of the contributions to which were made (directly or indirectly) by the same person or persons described in section 4946(a)(1)(A), (B), or (C), or members of their families (within the meaning of section 4946(d)), who made (directly or indirectly) substantially all of the contributions to the private foundation in question

Section 4946(a)(4) of the Code provides generally that the constructive ownership rules of section 267(c) apply in determining ownership of profits or beneficial interests.

Section 4947(a)(2) of the Code generally provides that in the case of a trust which is not exempt from tax under section 501(a), not all of the unexpired interests of which are devoted to charitable purposes, and which has amounts in trust for which a charitable deduction was allowed, sections 507, 508(e), 4941, 4943, 4944, and 4945 apply as if such trust were a private foundation, except for amounts in trust for which a charitable deduction was not allowed and which are segregated from amounts for which a charitable deduction was allowed.

Section 1.664-1(a)(4) of the Income Tax Regulations provides that a charitable remainder trust is not deemed created prior to the time property is first transferred to the trust.

Section 53.4941(d)-1(a) of the Foundations and Similar Excise Taxes Regulations provides that it is immaterial whether a transaction results in a benefit or a detriment to the private foundation in determining whether the transaction is an act of self-dealing.

Section 53.4941(d)-1(b)(3) of the regulations provides that "indirect self-dealing" shall not include a transaction with respect to a private foundation's interest or expectancy in property (whether or not encumbered) held by an estate (or revocable trust, including a trust which has become irrevocable on a grantor's death), regardless of when title to the property vests under local law, if--

(i) The administrator or executor of an estate or trustee of a revocable trust either--

(a) Possesses a power of sale with respect to the property,

(b) Has the power to reallocate the property to another beneficiary, or

(c) Is required to sell the property under the terms of any option subject to which the property was acquired by the estate (or revocable trust);

(ii) Such transaction is approved by the probate court having jurisdiction over the estate (or by another court having jurisdiction over the estate (or trust) or over the private foundation);

(iii) Such transaction occurs before the estate is considered terminated for federal income tax purposes pursuant to section 1.641(b)-3(a) (or in the case of a revocable trust, before it is considered subject to section 4947 of the Code);

(iv) The estate (or trust) receives an amount which equals or exceeds the fair market

value of the foundation's interest or expectancy in such property at the time of the transaction, taking into account the terms of any option subject to which the property was acquired by the estate (or trust); and

(v) With respect to transactions occurring after April 16, 1973, the transaction either--

(a) Results in the foundation receiving an interest or expectancy at least as liquid as the one it gave up,

(b) Results in the foundation receiving an asset related to the active carrying out of its exempt purposes, or

(c) Is required under the terms of any option which is binding on the estate (or trust).

Section 53.4941(d)-2(c)(1) of the regulations provides generally that the lending of money or other extension of credit between a private foundation and a disqualified person shall constitute an act of self-dealing. Thus, for example, an act of self-dealing occurs where a third party purchases property and assumes a mortgage, the mortgagee of which is a private foundation, and subsequently the third party transfers the property to a disqualified person who either assumes liability under the mortgage or takes the property subject to the mortgage. Similarly, except in the case of the receipt and holding of a note pursuant to a transaction described in section 53.4941(d)-1(b)(3), an act of self-dealing occurs where a note, the obligor of which is a disqualified person, is transferred by a third party to a private foundation which becomes the creditor under the note.

Section 53.4941(e)-1(e)(1)(i) of the regulations provides that if a transaction between a private foundation and a disqualified person is determined to be self-dealing, for purposes of section 4941 of the Code there is generally one act of self-dealing. If, however, such transaction relates to the leasing of property, the lending of money or other extension of credit, other use of money or property, or payment of compensation, the transaction will generally be treated (for purposes of section 4941 but not section 507 or section 6684) as giving rise to an act of self-dealing on the day the transaction occurs plus an act of self-dealing on the first day of each taxable year or portion of a taxable year which is within the taxable period and which begins after the taxable year in which the transaction occurs.

Section 53.4943-5(b)(1) of the regulations provides that the date of distribution shall be deemed to occur no later than the date on which the trust or estate is considered to be terminated under section 1.641(b)-3.

In Example (1) of section 53.4943-6(a)(3) of the regulations, on January 4, 1985, A, an individual, makes a contribution to F, a private foundation, of 200 shares of X Corporation common stock. Assume that F had no X stock before January 4, 1985, and under section 4943(c)(1) the receipt of the X stock by F would cause some or all of the 200 shares of the X stock to be classified as excess business holdings. Under the provisions of section 4943(c)(6)(A) and this paragraph (a), since the contribution of the X stock to F is a gift and not a purchase, the X stock in F's hands is treated as held by disqualified persons and not by F through January 3, 1990.

Example (2) of section 53.4943-6(a)(3) of the regulations assumes the facts as stated in Example (1) except that F receives the X stock as a bequest pursuant to the terms of A's will executed on April 1, 1980. A dies on June 3, 1984, and the stock is distributed to F on February 16, 1985. As in Example (1), the bequest of X to F is not a purchase under this paragraph (a). Consequently, the X stock in F's hands is

treated as held by disqualified persons and not by F through February 15, 1990.

Section 53.4943-6(b)(1) of the regulations provides that in the case of an acquisition of holdings in a business enterprise by a private foundation pursuant to the terms of a will or trust, the five-year period described in section 4943(c)(6) of the Code and section 53.4943-6 of the regulations shall not commence until the date on which the distribution of such holdings from the estate or trust to the foundation occurs. See section 53.4943-5(b)(1) for rules relating to the determination of the date of distribution under the terms of a will or trust. For purposes of this subparagraph, holdings in a business enterprise will not be treated as acquired by a private foundation pursuant to the terms of a will where the holdings in the business enterprise were not held by the decedent. Thus, in the case of after-acquired property, section 53.4943-6(b)(1) shall not apply, the five-year period described in section 4943(c)(6) of the Code and section 53.4943-6 of the regulations shall commence on the date of acquisition of such holdings by the estate, and such five-year period may expire prior to the date of distribution of such holdings from the estate. To the extent that an interest to which section 4943(c)(6) of the Code and section 53.4943-6(b)(1) of the regulations apply is constructively held by a private foundation under section 4943(d)(1) of the Code and section 53.4943-8 of the regulations prior to the date of distribution, it shall be treated as held by a disqualified person prior to such date by reason of section 4943(c)(6) of the Code. See section 53.4943-8 of the regulations for rules relating to constructive holdings held in an estate or trust for the benefit of the foundation.

Section 53.4943-6(c)(1) of the regulations provides that section 4943(c)(6) of the Code shall not apply to any transfer of holdings in a business enterprise by one private foundation to a related private foundation under section 4946(a)(1)(H).

Section 53.4943-6(c)(2) of the regulations provides that section 4943(c)(6) of the Code shall not apply to an increase in the holdings of a private foundation in a business enterprise that is part of a plan whereby disqualified persons will purchase additional holdings in the same enterprise during the five-year period beginning on the date of such change, e.g., to maintain control of such enterprise, since such increase shall be treated as caused in part by the purchase of such additional holdings.

Section 53.4943-8(b)(1) of the regulations provides generally that an interest owned by a trust is deemed constructively owned by its remainder beneficiaries.

Section 53.4943-10(a)(2) of the regulations provides that a bond or other evidence of indebtedness does not constitute a holding in a business enterprise unless such bond or evidence of indebtedness is otherwise determined to be an equitable interest in such enterprise.

Section 53.4944-1(a)(2)(i) of the regulations provides generally that an investment shall be considered to jeopardize the carrying out of the exempt purposes of a private foundation if it is determined that the foundation managers, in making such investment, have failed to exercise ordinary business care and prudence, under the facts and circumstances prevailing at the time of making the investment, in providing for the long- and short-term financial needs of the foundation to carry out its exempt purposes. In the exercise of the requisite standard of care and prudence the foundation managers may take into account the expected return (including both income and appreciation of capital), the risks of rising and falling price levels, and the need for diversification within the investment portfolio (for example, with respect to type of security, type of industry, maturity of company, degree of risk and potential for return). The determination whether the investment of a particular amount jeopardizes the carrying out of the exempt purposes of a foundation shall be made on an investment by investment basis, in each case taking into account the foundation's portfolio as a whole. No category of investments shall be treated as a per se violation of section 4944 of the Code. The determination whether the investment of any amount jeopardizes the carrying out of a foundation's exempt purposes is to be made as of the time that the foundation makes the investment and not subsequently on the

basis of hindsight.

Section 53.4944-1(a)(2)(ii)(a) of the regulations provides that section 4944 of the Code shall not apply to an investment made by any person which is later gratuitously transferred to a private foundation. If such foundation furnishes any consideration to such person upon the transfer, the foundation will be treated as having made an investment in the amount of such consideration.

Section 53.4944-1(a)(2)(iii) of the regulations provides generally that a private foundation which changes the form or terms of an investment (regardless of whether section 53.4944-1(a)(2)(ii) applies to such investment) will be considered to have entered into a new investment on the date of such change. Accordingly, a determination, under section 53.4944-1(a)(2)(i), whether such change in the investment jeopardizes the carrying out of the foundation's exempt purposes shall be made at such time.

Section 53.4947-1(c)(1)(iii) of the regulations provides that a newly created trust shall, for purposes of section 4947(a)(2) of the Code, be treated as having amounts in trust for which a deduction was allowed under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522 from the date of its creation, even if a deduction was allowed for such amounts only at a later date. For purposes of section 53.4947-1(c)(1)(iii) of the regulations, the date of creation of a charitable remainder trust shall be determined by applying the rules in section 1.664-1(a)(4).

Section 53.4947-1(c)(6)(i) of the regulations provides that section 4947(a)(2) of the Code generally applies to trusts in which some but not all unexpired interests are charitable. An estate from which the executor or administrator is required to distribute all of the net assets in trust or free of trust to both charitable and noncharitable beneficiaries will not be considered to be a split-interest trust under section 4947(a)(2) during the period of estate administration or settlement, except as provided in section 53.4947-1(c)(6)(ii) of the regulations. A split-interest trust created by will shall be considered a split-interest trust under section 4947(a)(2) of the Code as of the date of death of the decedent-grantor, except as provided in section 53.4947-1(c)(6)(iv) of the regulations.

Section 53.4947-1(c)(6)(ii)(A) of the regulations provides that when an estate from which the executor or administrator is required to distribute all of the net assets in trust or free of trust to both charitable and noncharitable beneficiaries is considered terminated for federal income tax purposes under section 1.641(b)-3(a), then the estate will be treated as a split-interest trust under section 4947(a)(2) of the Code (or a charitable trust under section 4947(a)(1), if applicable) between the date on which the estate is considered terminated under section 1.641(b)-3(a) of the regulations and the date on which final distribution of the net assets to the last remaining charitable beneficiary is made. This rule does not affect the determination of the tax liability under subtitle A of either charitable or noncharitable beneficiaries of the estates.

Section 53.4947-1(c)(6)(ii)(B) of the regulations illustrates section 53.4947-1(c)(6)(ii) by the following example. X dies on January 15, 1973 and bequeaths $10,000 to M, an organization described in section 501(c)(3) of the Code, and the residue of his estate to W, his wife. A deduction for the charitable bequest was allowed to X's estate under section 2055. Substantially all of X's estate consists of 100% of the stock of a wholly owned corporation, certain liquid assets such as marketable stocks and securities and bank accounts, and X's home, automobile, and other personal property. X's will gives his executor a full range of powers, including the power to sell the stock of the wholly owned corporation. After the death of X, his executor continues to manage the wholly owned corporation while attempting to sell the stock of the corporation. During this period, the executor makes no distributions to M. On May 24, 1978, the Internal Revenue Service determines under section 1.641(b)-3(a) of the regulations that the administration of the estate has been unduly prolonged and the estate is considered terminated as of that date for federal income tax purposes. X's estate will be treated as a split-interest trust described in section 4947(a)(2) of the Code

between May 24, 1978 and the date on which the $10,000 bequest to M is satisfied. X's estate will therefore be subject to the applicable private foundation provisions during that period and, for example, a sale of the house by the estate to any disqualified person (as defined in section 4946) will be an act of self-dealing under section 4941.

Section 53.4947-1(c)(6)(iii) of the regulations provides that a revocable trust that becomes irrevocable upon the death of the decedent-grantor under the terms of the governing instrument of which the trustee is required to hold some or all of its net assets in trust after becoming irrevocable for both charitable and noncharitable beneficiaries is not considered a split-interest trust under section 4947(a)(2) of the Code for a reasonable period of settlement after becoming irrevocable except that section 4941 may apply if the requirements of section 53.4941(d)-1(b)(3) of the regulations are not met. After that period, the trust is considered a split-interest trust under section 4947(a)(2) of the Code. For such purpose, the term "reasonable period of settlement" means that period reasonably required (or if shorter, actually required) by the trustee to perform the ordinary duties of administration necessary for the settlement of the trust. These duties include, for example, the collection of assets, the payment of debts, taxes, and distributions, and the determination of rights of the subsequent beneficiaries.

Section 53.4947-1(c)(6)(iv) of the regulations provides that a revocable trust that becomes irrevocable upon the death of the decedent-grantor, or a trust created by will, from which the trustee is required to distribute all of the net assets in trust or free of trust to both charitable and noncharitable beneficiaries is not considered a split-interest trust under section 4947(a)(2) of the Code for a reasonable period of settlement (within the meaning of section 53.4947-1(c)(6)(iii) of the regulations) after becoming irrevocable. After that period, the trust is considered a split-interest trust under section 4947(a)(2) of the Code (or a charitable trust under section 4947(a)(1), if applicable).

Rev. Proc. 2000-3, 2000-1 I.R.B. 103, section 3.01(32) provides that the Service will not rule whether the period of administration or settlement of a trust (other than a trust described in section 664) is reasonable or unduly prolonged. Section 4.02(1) provides that the Service ordinarily will not rule on matters in which the determination requested is primarily one of fact, e.g., whether an interest in a corporation is to be treated as stock or indebtedness.

Rationale:

Each of the rulings requested is discussed in turn below.

1. The Charitable Lead Trust described above will be a split-interest trust described in section 4947(a)(2) of the Code. A trust is not described in section 4947(a)(2) of the Code unless it has amounts for which a charitable deduction was allowed. Section 53.4947-1(c)(1)(iii) of the regulations provides, however, that a newly created trust is treated as having amounts for which a charitable deduction was allowed from the date of its creation, even if a deduction was allowed for such amounts only at a later date. By its terms, the Charitable Lead Trust shall come into existence upon the death of the surviving spouse. However, a trust is ordinarily not considered as created until it has a corpus. For instance, a charitable remainder trust is not considered created before property is first transferred to it. The Charitable Lead Trust will not receive funding until after the death of the surviving spouse.

Section 53.4947-1(c)(6) of the regulations sets forth additional rules describing the point in time at which a trust is considered a split-interest trust. A trust is allowed a reasonable period of administration or settlement before becoming subject to section 4947(a)(2) where (1) it is created by will or becomes irrevocable upon the death of the decedent-grantor and is required to distribute all of its net assets in trust or free of trust to both charitable and non-charitable beneficiaries (section 53.4947-1(c)(6)(iv) of the

regulations), or (2) it becomes irrevocable upon the death of the decedent-grantor and is required to hold some or all of its net assets in trust after becoming irrevocable for both charitable and non-charitable beneficiaries (section 53.4947-1(c)(6)(iii)). Section 53.4947-1(c)(6)(iii) indicates that a "reasonable period of settlement" is that period reasonably required (or if shorter, actually required) by the fiduciary to perform the ordinary duties of administration necessary for the settlement, such as the collection of assets, the payment of debts, taxes, and distributions, and the determination of rights of the subsequent beneficiaries.

Under the circumstances, the Charitable Lead Trust will not be deemed created before the death of the surviving spouse. Under section 53.4947-1(c)(6)(iii) of the regulations, it will not be considered a split-interest trust until a reasonable period of settlement expires, except that section 4941 of the Code may apply if the requirements of section 53.4941(d)-1(b)(3) of the regulations are not met. This settlement period will extend beyond the death of the surviving spouse for a period reasonably necessary to determine the rights of the remainder beneficiaries of the Revocable, Marital, and Family Trusts and to otherwise settle such trusts. The Trustee's determining the estate tax and obtaining the approval of the Probate Court to sell assets to a disqualified person appear to be reasonable steps toward the settlement of the various trusts. However, the determination of a "reasonable period" depends on the facts and circumstances involved in the particular settlement. Under Rev. Proc. 2000-3, the Service will not rule whether the period of settlement of a trust (other than a charitable remainder trust described in section 664) is reasonable. Thus, we cannot rule that the actual period taken to settle the various trusts will be a reasonable period of settlement.

If the administration of the Revocable, Marital, and Family Trusts (or any of them) is unduly prolonged, then the trust assets of the unduly prolonged trust or trusts would be attributed to the trust beneficiaries (including the Charitable Lead Trust), even if the beneficiaries have not actually received any distributions. Also, the Revocable, Marital, and Family Trusts will themselves become split-interest trusts under 53.4947-1(c)(6)(iv) of the regulations if their administration is prolonged beyond a reasonable period of settlement.

2. As discussed above, the Charitable Lead Trust will not be considered a split-interest trust during the reasonable period of settlement (which involves settlement of the Revocable, Marital, and Family Trusts). Thus, if the business holdings at issue are sold by the Trustee of the Revocable, Marital, and Family Trusts during the reasonable period of settlement, then the five-year period will never commence. If excess business holdings are transferred to the Charitable Lead Trust during the reasonable period of settlement, then the five-year period set forth in section 4943(c)(6) will commence for the Charitable Lead Trust to dispose of the excess business holdings.

If excess business holdings are held by the Revocable, Marital, or Family Trusts at the expiration of the reasonable period of settlement, then there will be several consequences. One, the five-year period will commence for the Revocable, Marital, and Family Trusts as split-interest trusts. Two, such trusts will no longer be able to sell property to a disqualified person with respect to it (or with respect to the Charitable Lead Trust) under the estate-administration exception of section 53.4941(d)-1(b)(3) of the regulations. Three, such assets will be deemed constructively held by the Charitable Lead Trust under section 53.4943-8(b)(1) of the regulations. Four, under section 53.4943-6(c)(1) of the regulations, the five-year period would not apply to a transfer of excess business holdings by the Revocable, Marital, or Family Trust to the Charitable Lead Trust, as such a transfer would be from a private foundation to a related private foundation under section 4946(a)(1)(H) of the Code.

Also, it is represented that section 53.4943-6(c)(2) of the regulations shall not apply to any excess business holdings held by a split-interest trust.

3. The negotiable Notes described above are, in form, evidences of indebtedness and not equitable interests in the enterprises that are makers of the Notes or that secure the Notes, under section 53.4943-10(a)(2) of the regulations. Whether a Note is an equity interest in substance, where the maker is a business enterprise, is primarily a factual issue upon which the Service ordinarily will not rule.

4. Under section 53.4944-1(a)(2)(ii) of the regulations, the Charitable Lead Trust's receipt by gift, and holding, of the Note or Notes of disqualified persons is not a jeopardizing investment.

5. Although the Charitable Lead Trust may not be considered a split-interest trust for most purposes at the time of the sale, section 53.4947-1(c)(6)(iii) of the regulations indicates that section 4941 of the Code may apply if the requirements of section 53.4941(d)-1(b)(3) of the regulations are not met.

Under section 53.4941(d)-1(b)(3) of the regulations, the sale by the Revocable, Marital, or Family Trusts of the Charitable Lead Trust's interest or expectancy in property, such as the stock of X, to disqualified persons will not be an act of self dealing, because the conditions set forth in that regulation will be met. The Trustee of the trusts possesses a power of sale with respect to trust property. Any sale must be approved by the probate court with jurisdiction over the selling trust or Charitable Lead Trust. The sale must occur before the Charitable Lead Trust is considered subject to section 4947 of the Code. The selling trust will receive fair market value for the property. The foundation will receive Notes that are at least as liquid as the property it would have otherwise received, as the Notes will be negotiable.

Ordinarily, an act of self-dealing occurs where a private foundation becomes a creditor on a note owed by a disqualified person, as the holding of the note is considered a loan between the foundation and the disqualified person. However, an exception applies under section 53.4941(d)-2(c)(1) of the regulations where, as here, the note is received pursuant to a transaction described in section 53.4941(d)-1(b)(3) of the regulations.

Rulings:

Accordingly, we rule as follows:

1. The Charitable Lead Trust established under A's Revocable Trust will not be deemed to become a Split Interest Trust subject to section 4947(a)(2) of the Code and the provisions of sections 4941, 4943, 4944, and 4945 until a reasonable time has elapsed after the death of both A and B sufficient to establish the Charitable Lead Trust and settle the various trusts that fund the Charitable Lead Trust, except that section 4941 may apply to a sale by any of those various trusts if the requirements of section 53.4941(d)-1(b)(3) of the Foundations and Similar Excise Taxes Regulations are not met.

2. The Trustee of A's Revocable Trust and B's Revocable Trust will have a period of up to five years beyond the expiration of a reasonable period of settlement of such trusts within which to dispose of excess business holdings.

3. The retention of Notes of a disqualified person by the Charitable Lead Trust will not constitute a business holding, assuming that such Notes qualify as debt rather than equity in a business enterprise for federal tax purposes.

4. Following the proposed sale of the stock of X (or if liquidated, its business assets, i.e. oil and gas working interests) to a disqualified person for cash and Notes of the disqualified person (assuming such sale is first approved by the Probate Court of M County), and assuming all procedures regarding the sale are otherwise complied with in accordance with the provisions of section 53.4941-1(d)-1(b)(3) of the

regulations, and a favorable letter ruling has been received from the National Office of the Internal Revenue Service, the receipt and retention of the Notes of the disqualified person or persons by the Trustee of the Charitable Lead Trust will not be deemed a jeopardy investment in the hands of the Charitable Lead Trust.

5. The proposed sale by the Revocable, Marital, or Family Trusts of business holdings to one or more disqualified persons for part cash and part Notes will not be deemed a prohibited act of self-dealing, and the subsequent retention of the Notes by the Charitable Lead Trust, and the subsequent payment of principal and interest on the Notes by disqualified persons will not constitute an act of self-dealing by the Trustee of the Charitable Lead Trust or the payors of the Notes who are disqualified persons, provided that:

(i) The selling price is at least equal to the appraised fair market value of the excess business holdings in the hands of the Charitable Lead Trust, and such fair market value is determined by a qualified appraiser.

(ii) The terms of sale, including price and terms of payment, are approved by the Court with jurisdiction over the Trust.

(iii) The proposed sale has been approved by the IRS National Office as not constituting an act of self-dealing.

(iv) The sale is completed before the selling trust becomes subject to the provisions of section 4947 of the Code.

(v) The terms of sale result in the Charitable Lead Trust receiving an interest or expectancy at least as liquid as the excess business holdings sold.

Except as we have ruled above, we express no opinion as to the tax consequences of the transaction under the cited provisions of the Code or under any other provisions of the Code.

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

Because this letter could help resolve any future questions about the application of Chapter 42 of the Code to V's activities, V should keep a copy of this ruling in V's permanent records.

We are providing the Ohio Key District Director a copy of this ruling.

Sincerely yours,

(signed) Garland A. Carter

Garland A. Carter
Manager, Exempt Organizations
Technical Group 2