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

200245058

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

UIL Numbers: 664.00-00
4943.00-00
4944.00-00

Date: AUG 13 2002

Contact Person:

Identification Number:

Telephone Number:

T:ED:B3

Employer Identification Number:

Legends:

Trust =
Foundation =
Settlor =
x =

Dear Sir or Madam:

This is in reference to your ruling request dated September 20, 2001 concerning issues under sections 664, 4943, 4944 and 4947 of the Internal Revenue Code ("Code").

Facts:

Trust was formed on x by the Settlor, who is also the sole Trustee. Trust states that the Trustee shall pay to the Settlor on a quarterly basis a seven percent (7%) unitrust payment during his lifetime, and after his death, the Trustee shall pay to Settlor's wife, the unitrust payment (subject to a power of revocation in the Settlor). At the death of the survivor recipient, Trust assets shall be distributed to the Foundation.

Foundation is a private family foundation in the process of being organized to operate to make grants to organizations that are tax-exempt under section 501(c)(3) of the Code and which will be operated exclusively for religious, charitable, scientific, educational and literary purposes and for no other purposes. This ruling is based on the understanding that the Foundation will be classified as an organization described in section 501(c)(3) and classified as a private foundation within the meaning of section 509(a). But if the Foundation fails to so qualify, then Trust assets will otherwise be dedicated to an organization that is described in section 501(c)(3) and classified as a private foundation within the meaning of section 509(a).

The specific Trust terms for which rulings are sought are set forth below:

(1) The Settlor has a testamentary power to revoke his wife's lifetime interest in the Trust.

(2) The Trustee has the authority to make late unitrust payments to the income recipients if (i) the payment is made within a reasonable time after the close of the tax year, and (ii) the entire unitrust amount is characterized as income only to the recipient from the categories described in §664(b)(1), (2), or (3), except to the extent its characterized as corpus described in §664(b)(4) because (a) the trust distributes property (other than cash) that it owned at the close of the taxable year to pay the unitrust amount, and (b) the Trustee elects to treat any income generated by the distribution as occurring on the last day of the taxable year for which the unitrust amount is due.

(3) The Settlor has an inter-vivos lifetime limited power to appoint his unitrust interest to or among one or more charitable organizations described in §170(c), §2055(a) and §2522(a). To the extent the Settlor does not exercise this power and to the extent he does not revoke his wife's lifetime interest, she shall have the inter-vivos limited power of appointment.

(4) If the Settlor or his wife, as the case may be, exercises his/her inter-vivos power of appointment, the adjusted basis of the property distributed in satisfaction of such appointment shall be fairly representative of the adjusted basis of the property available for distribution on the date of the distribution.

(5) If any additional contribution is made to the Trust which causes the interest directed to pass to the remainderman (the charitable organization) to be less than 10% of the fair market value of such additional property transferred to this Trust, the rate of the unitrust payment payable with respect to such additional property shall be reduced to the lowest percentage of the value of such additional property that will produce a remainder charitable interest of 10%; provided that in no event shall the total annual unitrust payment with respect to such additional property be less than 5% of the fair market value of such additional property. In the event that such payment would be less than 5% of the value of such additional property, the Trustee shall not accept such addition.

(6) The Trustee must use a current qualified appraisal, as defined in Treasury Regulation §1.170A-13(c)(3), for valuation purposes for any Trust assets other than cash, cash equivalents and marketable securities when the Trustee is (i) the Settlor, (ii) the Settlor's wife, (iii) any non-charitable beneficiary, or (iv) a related or subordinate party to any person listed under items (i), (ii), or (iii) within the meaning of §672(c) and the applicable Regulations.

(7) The Trustee is authorized to make any investments including, but not limited to closely-held corporations, partnerships, limited liability companies and other 'hedge' or 'private equity' investments, foreign and domestic, including specifically the investment of the entire Trust assets in such investments; provided, however, that the provisions of the instrument with respect to prohibited transactions, if applicable, shall over-ride any such power. Subject always to the Trustee's over-riding duty to comply with the Code and Treasury Regulations applicable to charitable remainder trusts and the other provisions of this instrument, the Trustee shall not be subject to the diversification requirements which may otherwise be applicable under state law. In all events, however, nothing in the Trust may restrict the Trustee from investing the Trust assets in a manner that could result in the annual realization of a reasonable amount of income or gain from the sale or disposition of Trust assets,

(9) The Trustee is authorized to engage and compensate professionals, including investment advisors, attorneys and accountants and to delegate ministerial duties, provided, however, the Trustee shall not relinquish investment control nor shall the fees or costs of any such persons be charged against the unitrust payments.

Trust has been funded and, upon receipt of a favorable determination letter, Settlor expects to make additional contributions to Trust.

The Foundation, which is the intended remainder beneficiary of Trust, will be operated to make grants to other organizations that are tax-exempt under section 501(c)(3) of the Code. Should the Settlor or his wife exercise their powers of appointment to appoint the assets of the Trust to any other organization, that organization shall be described in section 501(c)(3) and classified as a private foundation within the meaning of section 509(a).

Rulings Requested:

You have requested the following rulings:

1. That neither the Settlor's service as Trustee, nor his wife's power to serve as Trustee, will cause Trust to be disqualified under section 664 of the Code.

2. That the special valuation provisions requiring that a current qualified appraisal pursuant to the provisions of section 1.170A-13(c)(3) of the Income Tax Regulations ("regulations") at any time the Trustee is (i) the Settlor, (ii) his wife, (iii) any non-charitable beneficiary, or (iv) a related or subordinate part to any person listed in items (i), (ii), or (iii) within the meaning of section 672(c) of the Code and applicable regulations will not cause Trust to be disqualified under section 664.

3. That neither the Settlor's receipt of commissions as Trustee nor any successor Trustee's right to receive commissions as Trustee pursuant to state law, so long as no commissions are charged against the unitrust amount, shall cause Trust to be disqualified under section 664 of the Code.

4. That the Settlor's testamentary power to revoke his wife's lifetime interest in Trust will not cause Trust to be disqualified under section 664 of the Code.

5. That the inter-vivos limited power of appointment held by the income beneficiaries, which is a power to appoint assets of Trust among one or more charitable organizations described in sections 170(c), 2055(a) and 2522(a) of the Code, will not cause Trust to be disqualified under section 664.

6. That the terms which state that the adjusted basis of any property so appointed pursuant to the above referenced inter-vivos power of appointment by the Settlor, or by Settlor's wife, as the case may be, must be fairly representative of the adjusted basis of the property available for distribution, will not cause Trust to be disqualified under section 664 of the Code.

7. That computation of the unitrust payout in a year in which the Settlor or his wife, as the case may be, exercises his or her inter-vivos power of appointment utilizing methodology similar to that required for years in which additional contributions are made to Trust, determined as to distributions from, rather than additions to, Trust will not cause Trust to be disqualified under section 664 of the Code.

8. That the terms permitting the downward adjustment of the unitrust payment percentage with respect to additional contributions so as to ensure that the value of the interest directed to pass to the charitable organization with respect to such additional contribution is no less than 10% of the fair market value of such additional property, so long as the total annual unitrust payment percentage with respect to such additional contribution does not fall below 5% annually will not cause Trust to be disqualified under section 664 of the Code.

9. That the terms requiring the Trustee to reject any additional contribution which would fail the above referenced 10% test, after downward adjustment of the unitrust payment percentage, will not cause Trust to be disqualified under section 664 of the Code.

10. That the failure of Trust to preclude the Trustee from retaining excess business holdings under section 4943 of the Code or from making jeopardizing investments under section 4944 will not cause Trust to be disqualified under section 664.

11. That, during the term of Trust, investment of Trust assets in (i) foreign or domestic 'hedge' or 'private equity' investments, (ii) non-diversified positions, or (iii) or other investments which, if made by a private foundation, might or would be jeopardizing investments will not cause the Trustee to be liable for taxes under section 4944 of the Code

12. That, upon termination of Trust, the distribution of assets (i) which were invested in foreign or domestic 'hedge' or 'private equity' investments, (ii) which may be concentrated (non-diversified positions), or (iii) which, under the rules of section 4944(a)(1) of the Code might or would be deemed to jeopardize the carrying out of any of the exempt purposes of a private foundation if invested in by a private foundation will not be deemed to be a jeopardizing investment with respect to such remainderman organization.

Law and Analysis:

Section 664(d)(2) of the Code provides that for purposes of section 664, a charitable remainder unitrust is a trust -- (A) from which a fixed percentage (which is not less than 5 percent nor more than 50 percent) of the net fair market value of its assets, valued annually, is to be paid, not less often than annually, to one or more persons (at least one of which is not an organization described in section 170(c) and, in the case of individuals, only to an individual who is living at the time of the creation of the trust) for a term of years (not in excess of 20 years) or for the life or lives of such individual or individuals, (B) from which no amount other than the payments described in section 664(d)(2)(A) and other than qualified gratuitous transfers described in section 664(d)(2)(C) may be paid to or for the use of any person other than an organization described in section 170(c), (C) following the termination of the payments described in section 664(d)(2)(A), the remainder interest in the trust is to be transferred to, or for the use of, an organization described in section 170(c) or is to be retained by the trust for such a use or, to the extent the remainder interest is in qualified employer securities (as defined in section 664(g)(4)), all or part of such securities are to be transferred to an employee stock ownership plan (as defined in section 4975(e)(7)) in a qualified gratuitous transfer (as defined section 664(g)), and (D) with respect to each contribution of property to the trust, the value (determined under section 7520) of such remainder interest in such property is at least 10 percent of the net fair market value of such property as of the date such property is contributed to the trust.

Section 664(d)(3) of the Code provides that notwithstanding the provisions of sections 664(d)(2)(A) and (B), the trust instrument may provide that the trustee shall pay the income beneficiary for any year -- (A) the amount of the trust income, if such amount is less than the amount required to be distributed under sections 664(d)(2)(A), and (B) any amount of the trust income which is in excess of the amount required to be distributed under section 664(d)(2)(A), to the extent that (by reason of section 664(d)(3)(A)) the aggregate of the amounts paid in prior years was less than the aggregate of such required amounts.

Section 1.664-3(a)(3)(ii) of the regulations provides that a trust is not a charitable remainder unitrust if any person has the power to alter the amount to be paid to any named person other than an organization described in section 170(c) of the Code if such power would cause any person to be treated as the owner of the trust, or any portion thereof, if subpart E, part 1, subchapter J, chapter 1, subtitle A of the Code were applicable to such trust.

Rulings (1) and (2)

Section 1.664-1(a)(4) of the regulations provides that in order for a trust to be a charitable remainder trust it must meet the definition of, and function exclusively as, a charitable remainder trust from the creation of the trust. Solely for purposes of section 664 of the Code and the regulations thereunder, the trust will be deemed to be created at the earliest time that neither the grantor nor any other person is treated as the owner of the entire trust under subpart E, part 1, subchapter J, chapter 1, subtitle A of the Code (subpart E). For purposes of the preceding sentence, neither the grantor nor the grantor's spouse is treated as the owner of the trust merely because the grantor or the grantor's spouse is named as a recipient.

Section 1.664-3(a)(3)(ii) of the regulations provide that a trust is not a charitable remainder unitrust if any person has the power to alter the amount to be paid to any named person other than an organization described in section 170(c) of the Code if such power would cause any person to be treated as the owner of the trust, or any portion thereof, if subpart E were applicable to such trust.

Section 674(a) of the Code provides the general rule 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) of the Code provides that section 674(a) shall not apply to a power 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 section 170(c) (relating to the definition of charitable contributions). Section 1.674(a)-1(b) of the regulations provides that, in general terms, the grantor is treated as the owner of a 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 unless the power is one described in section 1.674(a)-1(b)(1)-(3). Pursuant to section 1.674(a)-1(b)(1)(iii), the power to choose between charitable beneficiaries or to affect the manner of their enjoyment of a beneficial interest (section 674(b)(4)) will not cause the grantor to be treated as an owner of a portion of the trust.

In the present situation, the Settlor is the trustee of the Trust. However, the unitrust amount payable to the noncharitable beneficiaries is fixed by the terms of the Trust and the trustee has no power to alter the amounts payable to those beneficiaries. Under these circumstances, neither the fact that the Settlor is the trustee nor the fact that his wife has the power to serve as trustee cause the grantor to be treated as the owner of any portion of the Trust under section 674(a) of the Code.

Section 1.664-1(a)(7)(i) of the regulations provides that, if unmarketable assets are transferred to or held by a trust, the trust will not be a trust with respect to which a deduction is available under section 170, 2055, 2106, or 2522 of the Code, or will be treated as failing to function exclusively as a charitable remainder trust unless, whenever the trust is required to value such assets, the valuation is (a) performed exclusively by an independent trustee; or (b)

determined by a "current qualified appraisal", as defined in section 1.170A-13(c)(3), from a "qualified" appraiser, as defined in section 1.170A-13(c)(5).

Section 1.664-1(a)(7)(ii) of the regulations provides that unmarketable assets are assets that are not cash, cash equivalents, or other assets that can be readily sold or exchanged for cash or cash equivalents. For example, unmarketable assets include real property, closely-held stock, and an unregistered security for which there is no available exemption permitting public sale.

We conclude that the fact that the grantor is the sole trustee of Trust does not disqualify the Trust as a charitable remainder unitrust under section 664 of the Code and the applicable regulations where the Trustee must use a current qualified appraisal for valuation purposes for any unmarketable assets when the Trustee is (i) the Settlor, (ii) the Settlor's wife, (iii) any non-charitable beneficiary, or (iv) a related or subordinate party to any person listed under items (i), (ii), or (iii) within the meaning of section 672(c) and the applicable regulations.

Ruling (3)

Section 1.664-3(a)(4) of the regulations provides that no amount other than an amount described in subparagraph (1) of that paragraph may be paid to or for the use of any person other than an organization described in section 170(c) of the Code. Section 1.664-3(a)(4) also provides that the governing instrument may provide that any amount other than the amount described in paragraph (1) of that paragraph shall be paid (or may be paid in the discretion of the trustee) to an organization described in section 170(c). An amount is not paid to or for the use of any person other than an organization described in section 170(c) if the amount is transferred for full and adequate consideration.

Section 1.664-3 of the regulations requires the unitrust amount to be computed as a fixed percentage of the net fair market value of the trust assets valued annually. Thus, if any portion of the trustee's commission is charged against the amount so computed, the requirement of section 1.664-3 that the unitrust amount be computed as a fixed percentage is not met. Rev. Rul. 74-19, 1974-1 C.B. 155.

Accordingly, the trustee's commissions may be charged against income or principal in excess of the computed unitrust amounts. Provided that the trustee's commissions are not charged against the computed unitrust amount, the Trust will not be disqualified under section 664 of the Code.

Ruling (4)

Section 1.664-3(a)(4) of the regulations provides, in part, that the trust may not be subject to a power to invade, alter, amend, or revoke for the beneficial use of a person other than an organization described in section 170(c) of the Code. Notwithstanding the preceding sentence, the grantor may retain the power exercisable only by will to revoke or terminate the interest of any recipient other than an organization described in section 170(c). Therefore, the Settlor's testamentary power to revoke his wife's lifetime interest in the Trust will not cause the Trust to be disqualified under section 664.

Ruling (5)

Section 1.664-3(a)(4) of the regulations provides that the governing instrument may provide that any amount other than the unitrust amount shall be paid (or may be paid in the discretion of the trustee) to an organization described in section 170(c) of the Code provided that, in the case of distributions in kind, the adjusted basis of the property distributed is fairly representative of the adjusted basis of the property available for payment on the date of the payment. The inter-vivos limited power of appointment held by the income beneficiaries will not cause the Trust to be disqualified under section 664.

Ruling (6)

Section 1.664-3(a)(4) of the regulations provides that the governing instrument may provide that any amount other than the unitrust amount shall be paid (or may be paid in the discretion of the trustee) to an organization described in section 170(c) of the Code, provided that, in the case of distributions in kind, the adjusted basis of the property distributed is fairly representative of the adjusted basis of the property available for payment on the date of the payment. The requirement that the adjusted basis of any property appointed pursuant to the inter-vivos power of appointment by the Settlor or the Settlor's wife must be fairly representative of the adjusted basis of the property available for distribution will not cause the Trust to be disqualified under section 664.

Ruling (7)

Section 1.664-3(b) of the regulations provides that additional contributions may be made to a charitable remainder unitrust. If the additional contribution is made after the annual valuation date, an additional distribution must be made based on the annual percentage times the value of the contribution times the fraction of the year that the new asset was held in the trust.

Rev. Proc. 90-31, 1990-1 C.B. 539, provides if any additional contributions are made to the Trust after the initial contribution, the unitrust amount for the year in which the additional contribution is made shall be equal to the lesser of (a) the Trust income for the taxable year, as defined in section 643(b) of the Code and the regulations thereunder, and (b) the percentage (as specified by the instrument) of the sum of (1) the net fair market value of the Trust assets as of the valuation date (excluding the assets so added and any income from, or appreciation on,

such assets) and (2) that proportion of the fair market value of the assets so added that was excluded under (1) that the number of days in the period that begins with the date of contribution and ends with the earlier of the last day of the taxable year or the date of death of the survivor recipient bears to the number of days in the period that begins on the first day of such taxable year and ends with the earlier of the last day in such taxable year or the date of death of the survivor recipient. In the case where there is no valuation date after the time of contribution, the assets so added shall be valued as of the time of contribution. The unitrust amount for any such year shall also include any amount of Trust income for such year that is in excess of the amount required to be distributed under (b) above to the extent that the aggregate of the amounts paid in prior years was less than the aggregate of the amounts computed as the percent (as specified by the instrument) of the net fair market value of the Trust assets on the valuation dates.

The regulations do not provide a formula for computing the execution of an inter-vivos power of appointment in a charitable remainder unitrust. The computation of the unitrust payout in the year when an inter-vivos power of appointment is executed by utilizing methodology similar to that required for years in which additional contributions are made to the Trust will not cause the Trust to be disqualified under section 664 of the Code.

Rulings (8) and (9)

Requests (8) and (9) address the requirement of sections 664(d)(2)(D) and 664(d)(4) of the Code. Section 664(d)(2)(D) provides that a charitable remainder unitrust is a trust that, with respect to each contribution of property to the trust, the value (determined under section 7520) of such remainder interest in such property is at least 10 percent of the net fair market value of such property as of the date such property is contributed to the trust. Section 664(d)(4) provides that if any contribution is made to a trust which before the contribution is a CRUT, and the contribution would (but for section 664(d)(4)) result in the trust ceasing to be a CRUT by reason of section 664(d)(2)(D), the contribution shall be treated as a transfer to a separate trust under regulations prescribed by the Secretary. Currently, there are no regulations under section 664(d)(4).

Trust has explained ruling requests (8) and (9) as follows:

> Ruling requests number 8 and 9 deal with sections 664(d)(2)(D) and 664(d)(4) of the Code and do not have precedent under any current rulings or regulations. Because section 1.664-3(a)(1)(i)(a) of the regulations provides that the trust must have pay [sic] fixed percentage of the fair market value of the trust assets determined annually, the ability of the Trustee to change that percentage would cause the Trust not to operate at a charitable remainder unitrust. Section 664(d)(4), however, serves to treat a contribution to a charitable remainder unitrust, which contribution would cause the trust to cease to qualify as a charitable remainder trust, to be treated as a contribution to a separate trust. Because section 664(d)(2)(D) requires that the remainder interest in each contribution of property to such a trust to equal no less than ten percent (10%) of the net fair market value of the property so contributed on the date it is contributed, and because the rate used in determining such remainder value (under section 7520) changes every month, it is

possible that a subsequent contribution to the trust would fail the test under section 664(d)(2)(D). Pursuant to section 664(d)(4), however, if the contribution is treated as having been made to a different trust, however, the test may be met. The provision in the instrument, therefore, requiring the Trustee to make such adjustment (or, in some cases, to deny the additional contribution) thereby causes such additional assets to be held as a separate trust under the same instrument, which separate trust thereupon has a separate unitrust payment requirement. The provisions of this instrument, therefore, serve to comply with sections 664(d)(2)(d) and 664(d)(4).

The provisions of Trust addressed by ruling requests (8) and (9) do not cause Trust to be disqualified under section 664 of the Code.

Rulings (10), (11) and (12)

Section 4943 of the Code imposes an excise tax on the excess business holdings of any private foundation in a business enterprise.

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

Section 4947(a)(2) of the Code provides, in relevant part, that in the case of a trust which is not exempt from tax under section 501(a), not all of the unexpired interests in which are devoted to one or more of the purposes described in section 170(c)(2)(B), and which has amounts in trust for which a deduction was allowed under section 170 or section 2522, section 507 (relating to termination of private foundation status), section 508(e)(relating to governing instruments) to the extent applicable to a trust described in this paragraph, section 4941 (relating to taxes on self-dealing), section 4943 (relating to taxes on excess business holdings) except as provided in subsection (b)(3), section 4944 (relating to investments which jeopardize charitable purposes) except as provided in subsection (b)(3), and section 4945 (relating to taxes on taxable expenditures) shall apply as if such trust were a private foundation. Section 4947(a)(2)(A) further provides that this paragraph shall not apply with respect to any amounts payable under the terms of such trust to income beneficiaries, unless a deduction was allowed under sections 170(f)(2)(B), 2055(e)(2)(B), or 2522(c)(2)(B).

Section 4947(b)(3)(B) of the Code provides, in relevant part, that sections 4943 and 4944 shall not apply to a split-interest trust if a deduction was allowed under section 170 (or similar charitable deduction provisions) for amounts payable under the terms of such trust to every remainder beneficiary but not to any income beneficiary.

Section 53.4944-1(a)(2)(i) of the Foundation and Similar Excise Taxes Regulations ("foundation 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.

Section 53.4947-2(b)(ii) of the foundation regulations provides that, under section 4947(b)(3), section 4943 and 4944 do not apply to a split-interest trust described in section 4947(a)(2) if a deduction was allowed under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2) or 2522 for amounts payable under the terms of the trust to every remainder beneficiary, but not to any income beneficiary.

Trust, represented to be a charitable remainder unitrust, is therefore a split-interest trust described in section 4947(a)(2) of the Code and treated as a private foundation for purposes of sections 4941, 4943, 4944, and 4945. Given the representation that a charitable deduction was allowed with respect to Trust, and that its remainder beneficiary is charitable but not its income beneficiaries, section 4947(b)(3)(B) provides that sections 4943 and 4944 do not apply to Trust.

By operation of section 4947(b)(3) and the regulations thereunder, sections 4943 and 4944 do not apply to charitable remainder unitrusts if unitrust payments are made only for private purposes, and if all remainder interests are devoted to charitable purposes, as is the case with Trust. As long as your proposed charitable remainder unitrust qualifies under section 664 of the Code and applicable regulations thereunder, and as long as a deduction will be allowable under section 2522 for amounts that will be payable under the trust to every remainder beneficiary but not to any income beneficiary, sections 4943 and 4944 will not apply to Trust.

Therefore, the failure of the trust document to preclude the Trustee from retaining excess business holdings, as defined in section 4943, or from making jeopardizing investments as defined in section 4944, shall not disqualify Trust within the meaning of section 664(d)(2).

The Trustee shall not be liable for taxes under section 4943 if he retains business holdings that would be excess business holdings as defined in that Code section. Likewise, the Trustee shall not be liable for taxes under section 4944 if he invests Trust assets in investments that, if made by a private foundation, would be jeopardizing investments under that Code section.

Accordingly, based on your representations, we rule as follows:

1. That neither the Settlor's service as Trustee, nor his wife's power to serve as Trustee, will cause Trust to be disqualified under section 664 of the Code.

2. That the special valuation provisions requiring that a current qualified appraisal pursuant to the provisions of section 1.170A-13(c)(3) of the Income Tax Regulations ("regulations") at any time the Trustee is (i) the Settlor, (ii) his wife, (iii) any non-charitable

beneficiary, or (iv) a related or subordinate part to any person listed in items (i), (ii), or (iii) within the meaning of section 672(c) of the Code and applicable regulations will not cause Trust to be disqualified under section 664.

3. That neither the Settlor's receipt of commissions as Trustee nor any successor Trustee's right to receive commissions as Trustee pursuant to state law, so long as no commissions are charged against the unitrust amount, shall cause Trust to be disqualified under section 664 of the Code.

4. That the Settlor's testamentary power to revoke his wife's lifetime interest in Trust will not cause Trust to be disqualified under section 664 of the Code.

5. That the inter-vivos limited power of appointment held by the income beneficiaries, which is a power to appoint assets of Trust among one or more charitable organizations described in sections 170(c), 2055(a) and 2522(a) of the Code, will not cause Trust to be disqualified under section 664.

6. That the terms which state that the adjusted basis of any property so appointed pursuant to the above referenced inter-vivos power of appointment by the Settlor, or by Settlor's wife, as the case may be, must be fairly representative of the adjusted basis of the property available for distribution, will not cause Trust to be disqualified under section 664 of the Code.

7. That computation of the unitrust payout in a year in which the Settlor or his wife, as the case may be, exercises his or her inter-vivos power of appointment utilizing methodology similar to that required for years in which additional contributions are made to Trust, determined as to distributions from, rather than additions to, Trust will not cause Trust to be disqualified under section 664 of the Code.

8. That the terms permitting the downward adjustment of the unitrust payment percentage with respect to additional contributions so as to ensure that the value of the interest directed to pass to the charitable organization with respect to such additional contribution is no less than 10% of the fair market value of such additional property, so long as the total annual unitrust payment percentage with respect to such additional contribution does not fall below 5% annually will not cause Trust to be disqualified under section 664 of the Code.

9. That the terms requiring the Trustee to reject any additional contribution which would fail the above referenced 10% test, after downward adjustment of the unitrust payment percentage, will not cause Trust to be disqualified under section 664 of the Code.

10. That the failure of Trust to preclude the Trustee from retaining excess business holdings under section 4943 of the Code or from making jeopardizing investments under section 4944 will not cause Trust to be disqualified under section 664.

11. That, during the term of Trust, investment of Trust assets in (i) foreign or domestic 'hedge' or 'private equity' investments, (ii) non-diversified positions, or (iii) or other investments which, if made by a private foundation, might or would be jeopardizing investments will not cause the Trustee to be liable for taxes under section 4944 of the Code

12. That, upon termination of Trust, the distribution of assets (i) which were invested in foreign or domestic 'hedge' or 'private equity' investments, (ii) which may be concentrated (non-diversified positions), or (iii) which, under the rules of section 4944(a)(1) of the Code might or would be deemed to jeopardize the carrying out of any of the exempt purposes of a private foundation if invested in by a private foundation will not be deemed to be a jeopardizing investment with respect to such remainderman organization.

Pursuant to Rev. Proc. 2001-3, 2001-3 C.B. 111, the Internal Revenue Service has generally discontinued issuing rulings concerning whether an inter vivos CRUT with one or two lives satisfies the requirements of section 664 of the Code. Trust, however, contains provisions not addressed in Rev. Proc. 90-31, 1990-1 C.B. 539, and therefore we will issue a ruling on whether those provisions disqualify the proposed trust under section 664. In accordance with Rev. Proc. 2001-3, however, we will not rule on whether Trust satisfies the requirements of section 664.

This ruling is based on the understanding that there will be no material changes in the facts upon which it is based.

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

If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Robert C. Harper, Jr.

Robert C. Harper, Jr.
Manager, Exempt Organizations
Technical Group 3