TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

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Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

Founder A =
Founder B =
Child =
Corporation =

Dear :

This is in response to your letters requesting certain rulings on the application of Part II of Subchapter F of Chapter 1, Subtitle A (IRC §§ 507-509), Part IV of Subchapter A of Chapter 11, Subtitle B (§§ 2051-2058), and Subchapter A of Chapter 42, Subtitle D (§§ 4940-4948) to the proposed transactions described below.

Facts

You have stated that you intend to submit your Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code. The rulings contained in this letter are expressly contingent upon your being recognized as an organization described in § 501(a) and classified as a private foundation within the meaning of § 509 at the time of receipt of any distribution from the charitable lead annuity trust described below.

You are the charitable recipient of an annuity interest in the Founder A and Founder B Charitable Lead Annuity Trust One ("CLAT One") to be created under the Founder A Revocable Trust or the Founder B Revocable Trust, upon the death of the second to die of Founder A and Founder B. You are a charitable trust created by a child of Founder A and Founder B, Child. Child is the sole remainderman of CLAT One. Two other charitable trusts have been created by the other two children of Founder A and Founder B. Each child will be the remainder beneficiary of one of the CLATs. The charitable recipient of each of the other CLATs will be one of the charitable trusts created by the two other children of Founder A and Founder B, respectively, and each such child will be the remainderman of such CLAT. None of the charitable trusts that will be recipients of the annuity amounts from the CLATs will own any stock which could give rise to excise business holdings until after the deaths of both Founder A and Founder B. You have represented that all three charitable trusts are expected to be classified by the Internal Revenue Service as private foundations within the meaning of § 509.

At the deaths of each of Founder A and Founder B, their Last Wills and Testaments leave their residuary estates to the Founder A Revocable Trust and the Founder B Revocable Trust, respectively. Under the revocable trusts, the residue of the estate of the first to die passes to a marital trust for the surviving spouse. The marital trust is intended to qualify for the marital deduction under § 2056. At the surviving spouse's death, 70 percent of the assets of the marital trust established by the first to die and 70 percent of the residue of the surviving spouse's estate will be distributed equally to the three CLATs. All three CLATs will be created under the revocable trust of the second to die of Founder A and Founder B. You have represented that estate taxes, administration expenses, and claims against the estate will not be charged against the bequests to the CLATs or, in the case of the surviving spouse, to the trust assets being distributed from the marital trust to the CLATs. Each CLAT is intended to satisfy the requirements of Rev. Proc. 2007-46, 2007-29 I.R.B. 102.

With respect to any property passing to the three CLATs, the Trustee of each CLAT is directed to pay an annuity amount, annually, at the end of each taxable year for a term of 20 years to the corresponding charitable trust. Using values as finally determined for federal estate tax purposes for the estate of the last to die of Founder A and Founder B, the Trustee of each CLAT is directed to use a formula to determine the annuity amount to be paid each year. This annual annuity amount is to be paid from income and, to the extent income is not sufficient, from principal. In the event the income of a CLAT is in excess of the annuity amount in any taxable year, such excess income will also be distributed to the charitable beneficiary. The first day of the annuity period is the date of death of the surviving spouse, but payment of the annuity amount may be deferred from this date until the end of the taxable year in which a CLAT is completely funded. Within a reasonable time after the end of the taxable year in which a CLAT is completely funded, the trustee must pay to the charitable beneficiary the difference between any annuity amounts actually paid and the annuity amounts payable, plus interest. The interest for any period is to be computed at the § 7520 rate of interest in effect for the date of the surviving spouse's death. All interest is to be compounded annually. The last day of the annuity period is the day preceding the twentieth anniversary of the date of death of the surviving spouse. If a designated foundation is not an organization described in § 170(c) and § 2055(a) at the time any payment is to be made to it, the trustee will distribute the annuity to one or more other organizations described in § 170(c) and § 2055(a), as the trustee selects in the trustee's discretion. During the trust term of each CLAT, no payment will be made to any person other than the charitable beneficiary.

No additional contributions can be made to a CLAT after the initial contribution. The initial contribution, however, will be deemed to consist of all property passing to the trust by reason of the surviving spouse's death. You have represented that the charitable lead annuity interests bequeathed to each of the charitable trusts will comprise substantially all of all contributions or bequests made and to be made to each of them. It also is assumed that each charitable lead annuity interest will be worth more than $5,000 at the time of the making of the bequests.

The CLATs are irrevocable. However, the trustee of each CLAT has the power, acting alone, to amend a CLAT from time to time in any manner required for the sole purpose of ensuring that the annuity passing to the charitable beneficiary is a guaranteed annuity interest under § 2055(e)(2)(B) and the regulations thereunder and that payment of the annuity to the charitable beneficiary will be deductible from the gross income of the CLAT to the extent provided by § 642(c)(1) and the regulations thereunder.

You represent that the formula for calculating the annuity amount will adhere to the requirements of the Internal Revenue Code, specifically §§ 2032 and 7520. We specifically are not ruling as to whether your valuations will meet such requirements of the Code.

You also have represented that the annuity amount payable annually by each CLAT to each charitable trust shall be an amount, rounded down to the nearest whole dollar amount, which, when multiplied by certain represented factors for a 20-year term, will result in the value of the charitable lead annuity interest in each CLAT to be as close as possible to, but not exceeding, 60 percent of the total value of the trust assets of each CLAT, using values as finally determined for estate tax purposes.

Rulings Requested

You have requested the following rulings:

1. The estate of the surviving spouse of Founder A and Founder B will be entitled to a charitable deduction under § 2055(e)(2) for assets passing to the three CLATs created under the revocable trust of the surviving spouse, including the assets passing from the marital trust created under the revocable trust of the predeceased spouse.

2. Founder A and Founder B will not be considered substantial contributors as defined in § 507(d)(2) and therefore will not be considered disqualified persons under § 4946(a)(1)(A) with respect to you.

3. Stock owned by Founder A and Founder B before their deaths shall not be counted in determining whether or not you are subject to the excise tax on excess business holdings as provided under § 4943.

4. The only disqualified persons with respect to you will be:

    a. Child, the creator of you, and being the remainder beneficiary of the corresponding CLAT,
    b. The CLAT of which you are a beneficiary, which will be a substantial contributor to you,
    c. The living family members, as defined under §4946(d) (but not including Founder A and Founder B), of Child,
    d. Certain entities in which Child has an interest, as defined under § 4946(a)(1)(E) and (F), and
    e. Certain entities in which the family members, as defined under § 4946(d), of Child (but not including Founder A and Founder B) have an interest, as defined under § 4946(a)(1)(E) and (F).

5. The three private foundations will not be disqualified persons with respect to each other under § 4946(a)(1)(H).

Law

I.R.C. § 501(c)(3) exempts from federal income tax an organization organized and operated exclusively for charitable or educational purposes.

I.R.C. § 507(d)(2)(A) defines a substantial contributor as any person who contributed or bequeathed an aggregate amount of more than $5,000 to a private foundation, if such amount is more than 2 percent of the total contributions and bequests received by the foundation before the close of the taxable year of the foundation in which the contribution or bequest is received by the foundation from such person. In the case of a trust, the term "substantial contributor" also means the creator of the trust.

I.R.C. § 2044(a) and (b) provides that, for purposes of the federal estate tax, the gross estate of a decedent will include the value of property with respect to which a deduction was allowed for the transfer of the property to the decedent under § 2056(b)(7). Section 2044(c) treats this property as passing from the decedent.

I.R.C. § 2055(a) provides that for purposes of the federal estate tax, the value of the taxable estate is determined by deducting from the value of the gross estate the amount of all bequests, legacies, devises, or transfers to or for the use of certain charitable organizations.

I.R.C. § 2055(e)(1) provides that no deduction is allowed under § 2055(a) for a transfer to or for the use of an organization or trust described in § 508(d) or § 4948(c)(4) subject to the conditions specified in such sections.

I.R.C. § 2055(e)(2)(B) disallows the deduction under § 2055(a) where the lead interest in property passes to a charitable or other organization described in § 2055(a) and the remainder interest in the same property passes to a noncharitable beneficiary, unless the lead interest is in the form of a guaranteed annuity or is a fixed percentage of the fair market value of all the property (to be determined yearly) and distributed annually.

I.R.C. § 2056(a) provides that the value of the taxable estate will, except as limited by § 2056(b), be determined by deducting from the value of the gross estate an amount equal to the value of any interest in property which passes or has passed from the decedent to his surviving spouse, but only to the extent that such interest is included in determining the value of the gross estate.

I.R.C. § 2056(b)(1) provides that where, on the lapse of time, on the occurrence of an event or contingency, or on the failure of an event or contingency to occur, the interest transferred to the surviving spouse will terminate or fail, no deduction will be allowed with respect to the interest if the decedent transfers to any person other than the surviving spouse an interest in the property, and if by reason of the transfer the other person may possess or enjoy any part of the property after the termination or failure of the interest transferred to the surviving spouse.

I.R.C. § 2056(b)(7)(A) provides that, in the case of qualified terminable interest property, for purposes of § 2056(b)(1) no part of the property will be considered as transferred to any person other than the surviving spouse.

I.R.C. § 2056(b)(7)(B) provides that the term "qualified terminable interest property" (QTIP) means property that passes from the decedent, in which the surviving spouse has a qualifying income interest for life, and to which an election under § 2056(b)(7) applies. The surviving spouse has a qualifying income interest for life if: (i) the surviving spouse is entitled to all the income from the property, payable annually or at more frequent intervals, or has a usufruct interest for life in the property, and (ii) no person has a power to appoint any part of the property to any person other than the surviving spouse. A specific portion of property will be treated as separate property. An election under the paragraph with respect to any property will be made by the executor on the return of tax imposed by § 2001. The election, once made, is irrevocable.

I.R.C. § 4943(a) imposes a tax on the excess business holdings of any private foundation in a business enterprise during any taxable year.

I.R.C. § 4943(c)(1) defines the term "excess business holdings" as the amount of stock in a corporation that a foundation would have to dispose of to a person other than a disqualified person in order for the remaining holdings of the foundation in the corporation to be permitted holdings.

I.R.C. § 4943(c)(2)(A) provides that the permitted holdings of any private foundation in an incorporated business enterprise are:

(i) 20 percent of the voting stock, reduced by
(ii) The percentage of the voting stock owned by all disqualified persons.

In any case in which all disqualified persons together do not own more than 20 percent of the voting stock of an incorporated business enterprise, nonvoting stock held by the private foundation shall also be treated as permitted holdings.

I.R.C. § 4943(c)(2)(C) provides that a private foundation shall not be treated as having excess business holdings in any corporation in which it (together with all other private foundations which are described in § 4946(a)(1)(H)) owns not more than 2 percent of the voting stock and not more than 2 percent in value of all outstanding shares of all classes of stock.

I.R.C.§ 4943(c)(6)(A) provides that, with certain exceptions not applicable here, if after May 26, 1969, there is a change in the holdings in a business enterprise (other than by purchase by the private foundation or by a disqualified person—such as receipt of a gift or bequest) which causes the private foundation to have 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.

I.R.C. § 4943(c)(6)(B) provides that, with certain exceptions not applicable here, if after May 26, 1969, 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 an increase in excess business holdings in such enterprise (determined without regard to § 4943(c)(6)(A), § 4943(c)(6)(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).

I.R.C. § 4943(d)(1) provides that in computing the business holdings of a private foundation, or a disqualified person with respect thereto, in any business enterprise, any stock or other interest owned, directly or indirectly, by or for a trust shall be considered as being owned proportionately by or for its beneficiaries.

I.R.C. § 4946(a)(1) defines the term "disqualified person" with respect to a private foundation to include (A) a substantial contributor to the foundation and (B) a foundation manager. It also includes a member of the family of any individual substantial contributor or foundation manager. In addition, it includes a trust or estate in which persons described above hold more than 35 percent of the beneficial interest.

I.R.C. § 4946(b) defines the term foundation manager to include an officer, director, or trustee of a foundation or an individual having powers or responsibilities similar to those of officers, directors, or trustees of the foundation.

I.R.C. § 4946(d) states that for purposes of determining who is a "disqualified person," the family of any individual shall include only his spouse, ancestors, children, grandchildren, great grandchildren, and the spouses of children, grandchildren, and great grandchildren.

I.R.C. § 4946(a)(1)(H) provides that for the purposes of § 4943, the term "disqualified person" includes (i) a private foundation which is effectively controlled (directly or indirectly) by the same person or persons who control the private foundation in question, or (ii) a private foundation to which substantially all of the contributions were made (directly or indirectly) by the same person or persons described in subparagraph (A), (B), or (C) of § 4946(a)(1), or members of their families, who made (directly or indirectly) substantially all of the contributions to the private foundation in question.

I.R.C. § 4947(b)(3)(A) provides, in part, that § 4943 shall not apply to a trust which is described in subsection (a)(2) if all the income interest (and none of the remainder interest) of such trust is devoted solely to one or more of the purposes described in section 170(c)(2)(B), and all amounts in such trust for which a deduction was allowed under section 170, 545(b)(2), 642(c), 2055, 2106(a)(2), or 2522 have an aggregate value not more than 60 percent of the aggregate fair market value of all amounts in such trusts. Treas. Reg. § 53.4947-2(b)(1)(i) restates § 4947(b)(3)(A), and adds that the determination of the aggregate value of the income interest is to be made as of "the time for which the deduction was allowed."

I.R.C. § 7520(a)(1) provides, in part, that if an income, estate, or gift tax charitable contribution is allowable for any part of the property transferred, the taxpayer may elect to use the federal midterm rate for either of the two months preceding the month in which the valuation date falls. Section 20.7520-2 provides the method to determine the value of a charitable lead annuity interest.

Treas. Reg. § 1.507-6(c)(1) provides, in part, that the term "contribution" shall, for purposes of section 507(d)(2), have the same meaning as such term has under section 170(c) and also include bequests, legacies, devises, and transfers within the meaning of section 2055 or 2106(a)(2). Thus, for purposes of section 507(d)(2), any payment of money or transfer of property without adequate consideration shall be considered a contribution.

Treas. Reg. § 20.2055-2(e) provides, in part, that in the case of decedents dying after December 31, 1969, where an interest in property passes or has passed from the decedent for charitable purposes and an interest (other than an interest which is extinguished upon the decedent's death) in the same property passes or has passed from the decedent for private purposes (for less than an adequate and full consideration in money or money's worth) after October 9, 1969, no deduction is allowed under section 2055 for the value of the interest which passes or has passed for charitable purposes unless the interest in property is a deductible interest described in subparagraph (2) of § 20.2055-2(e).

Subparagraph (2)(vi) of Treas. Reg. § 20.2055-2(e) provides, in relevant part, that a "deductible interest" for purposes of subparagraph (1) includes a charitable interest in property where the charitable interest is a guaranteed annuity interest, whether or not such interest is in trust. For this purpose, the term "guaranteed annuity interest" means the right pursuant to the instrument of transfer to receive a guaranteed annuity. A guaranteed annuity is an arrangement under which a determinable amount is paid periodically, but not less often than annually. An amount is determinable if the exact amount which must be paid under the conditions specified in the instrument of transfer can be ascertained as of the appropriate valuation date. For example, the amount to be paid may be a stated sum for a term of years.

Treas. Reg. § 20.2055-2(e)(2)(vi)(e) provides that where a charitable interest in the form of a guaranteed annuity interest is in trust and the present value, on the appropriate valuation date, of all the income interests for a charitable purpose exceeds 60 percent of the aggregate fair market value of all amounts in such trust (after the payment of estate taxes and all other liabilities), the charitable interest will not be considered a guaranteed annuity interest unless the governing instrument of the trust prohibits both the acquisition and the retention of assets which would give rise to a tax under § 4944 if the trustee had acquired such assets.

Treas. Reg. § 53.4943–8(a)(1) provides, in part, that for purposes of § 4943, in computing the holdings in a business enterprise of a private foundation, or a disqualified person (as defined in § 4946), any stock or other interest owned, directly or indirectly, by or for a corporation, partnership, estate or trust shall be considered as being owned proportionately by or for its shareholders, partners, or beneficiaries except as otherwise provided in paragraphs (b), (c) and (d) of this section.

Treas. Reg. §53.4943-8(b) provides, in part, that any interest actually or constructively owned by an estate or trust is deemed constructively owned, in the case of an estate, by its beneficiaries or, in the case of a trust, by its remainder beneficiaries. Thus, if a trust owns 100 percent of the stock of a corporation A, and if, on an actuarial basis, W's life interest in the trust is 15 percent, Y's life interest is 25 percent, and Z's remainder interest is 60 percent, under this paragraph (b), Z will be considered to be the owner of 100 percent of the stock of corporation A.

Treas. Reg. § 53.4943-2(a)(2) provides, in relevant part, that in calculating the amount of the tax imposed by § 4943 for a taxable year, the tax shall be imposed on the last day of the private foundation's taxable year, but the amount of such tax and the value of the excess business holdings subject to such tax shall be determined with respect to the foundation's holdings in any business enterprise as of that day during the foundation's taxable year when the foundation's excess holdings in such enterprise were the greatest.

Treas. Reg. § 53.4946-1(a)(5) provides that for purposes of subparagraph (1)(iii)(a) and (v) of § 53.4946-1(a), the term "combined voting power" includes voting power represented by holdings of voting stock, actual or constructive (under § 4946(a)(3)), but does not include voting rights held only as a director or trustee.

Treas. Reg. § 53.4947-2(b)(1)(i) restates § 4947(b)(3)(A) (which exempts from § 4943 certain charitable lead trusts in which the charitable lead interests do not exceed 60 percent of the aggregate fair market value of all amounts in such trusts), and adds that the determination of the aggregate value of the income interest is to be made as of "the time for which the deduction was allowed."

Analysis

Ruling 1: The estate of the surviving spouse of Founder A and Founder B will be entitled to a charitable deduction under § 2055(e)(2) for assets passing to the three CLATs created under the revocable trust of the surviving spouse, including the assets passing from the marital trust created under the revocable trust of the predeceased spouse..

In this case, the formula set forth in each revocable trust to determine the annuity from each CLAT results in an amount that is determinable because it is ascertainable as of the valuation date of the surviving spouse's estate. Therefore, based upon the facts submitted and the representations made, we conclude that the formula results in a guaranteed annuity within the meaning of § 2055(e)(2)(B) because it satisfies the requirement that the annuity be a determinable amount.

Accordingly, based upon the facts submitted and the representations made, we also conclude that the estate of the surviving spouse will be entitled to a deduction under § 2055(a) for the present value of the annuity from each CLAT provided: (1) the marital trust's terms satisfy the requirements of § 2056(b)(7) and the election under § 2056(b)(7) is properly made for the assets of the marital trust that actually pass from the marital trust to each of the CLATs; (2) the assets that actually pass from the marital trust to each of the CLATs are not subject to the liabilities of the surviving spouse's estate; (3) the CLATs' terms satisfy the requirements of Rev. Proc. 2007-46 (or the requirements of any successor guidance); and (4) the recipient of the annuity from each CLAT is a charitable foundation described in § 170(c), § 2055(a), and § 501(c)(3) and classified as a private foundation under § 509, which is not otherwise described in § 508(d) or § 4948(c)(4), or an organization described in § 170(c), § 2055(a), and § 501(c)(3), which is not otherwise described in § 508(d) or § 4948(c)(4).

Ruling 2: Founder A and Founder B will not be considered substantial contributors as defined in § 507(d)(2) and therefore will not be considered disqualified persons under § 4946(a)(1)(A) with respect to you.

Under § 4946(a)(1)(A), the term "disqualified person" is defined to include a person who is a substantial contributor. Section 507(d)(2)(A) defines the term "substantial contributor" to include any person who contributed or bequeathed an aggregate amount of more than $5,000 to a private foundation, if such amount is more than two percent of the total contributions and bequests received by the foundation before the close of the taxable year of the foundation in which the contribution or bequest is received by the foundation from such person. Treas. Reg. §

1.507-6(c)(1) provides, in part, that the term "contribution" shall, for purposes of section 507(d)(2), have the same meaning as such term has under section 170(c) and also include bequests, legacies, devises, and transfers within the meaning of section 2055 or 2106(a)(2). Thus, for purposes of section 507(d)(2), any payment of money or transfer of property without adequate consideration shall be considered a contribution.

Founder A or Founder B will bequeath charitable lead annuity interests in the CLATs to the foundations. The annuity interests are designed to qualify as "guaranteed annuity interests" and, therefore, as "deductible interests" for purposes of the estate tax, as defined in Treas. Reg. § 20.2055(e)(2)(vi). It is assumed that the value of each of these bequeathed charitable lead annuity interests will exceed $5,000. In addition, it is expected that such bequests will constitute substantially all of all bequests that will be made to the foundations and, thus, will exceed the two-percent minimum prescribed by § 507(d)(2) in defining "substantial contributor." Accordingly, the later to die of Founder A or Founder B will be considered a substantial contributor, as defined in § 507(d)(2) to the foundations to which he or she will bequeath the charitable lead annuity interests.

Ruling 3: Stock owned by Founder A and Founder B before their deaths shall not be counted in determined whether or not you are subject to the excise tax on excess business holdings as provided under § 4943.

Generally, § 4943(a)(1) imposes a tax on the excess business holdings in a business enterprise of a private foundation. Section 4943(c)(2) provides, in part, that the permitted holdings of any private foundation in an incorporated business enterprise are 20 percent of the voting stock, reduced by the percentage of the voting stock owned by all disqualified persons.

The proposed transfers of assets to the CLATs, including any Corporation stock, will not take place until after the deaths of Founder A and Founder B. The foundations will not acquire any stock in Corporation unless it is distributed to them by the CLATs in satisfaction of the foundations' rights to receive the annual annuity amounts.

Treas. Reg. § 53.4943-2(a)(2) provides, in relevant part, that in calculating the amount of the tax imposed by § 4943 for a taxable year, the tax shall be imposed on the last day of the private foundation's taxable year. But, the amount of such tax and the value of the excess business holdings subject to such tax shall be determined with respect to the foundation's holdings in any business enterprise as of the day during the foundation's taxable year when the foundation's excess holdings in the enterprise were the greatest. By definition, this computation for any given year will have to occur following the deaths of Founder A and Founder B. Also, by definition, at the time of any such computations, Founder A and Founder B will no longer be shareholders in Corporation. Your computations under § 4943 will be made by taking into account the stock owned by you and your disqualified persons as of each computation date. Accordingly the stock owned by Founder A and Founder B before their deaths shall not be counted in determining whether or not you are subject to the excise tax on excess business holdings as provided under § 4943.

Ruling 4: The only disqualified persons with respect to you will be:

a. *Child, the creator of you and being the remainder beneficiary of the corresponding CLAT,*
b. *The CLAT of which you are the beneficiary, which will be a substantial contributor to you,*
c. *The living family members, as defined under §4946(d) (but not including Founder A and Founder B) of Child,*
d. *Certain entities in which Child have an interest, as defined under § 4946(a)(1)(E) and (F), and*
e. *Certain entities in which the family members, as defined under § 4946(d), of Child (but not including Founder A and Founder B) have an interest, as defined under § 4946(a)(1)(E) and (F).*

We will rule as to whether a certain person or entity may or may not be a disqualified person if we are provided sufficient facts. However, we normally decline to rule as to whether certain named persons are the sole disqualified persons with regard to a transaction.

Child is a disqualified person because she is the child of Founder A and Founder B, one of which will be a substantial contributor to you, and also is the creator of you. Thus, Child is described in § 4946(a)(1)(D) as a member of the family of a substantial contributor and is described in § 4946(a)(1)(A) because she is the creator of a trust that is a private foundation (i.e., you) described in the last sentence of § 507(d)(2)(A).

CLAT One, because it is merely paying an annuity, is not a substantial contributor to you. However, CLAT One will be a disqualified person with respect to you. A trust is a disqualified person if more than 35 percent of the beneficial interest in the trust, including constructive holdings, is owned by substantial contributors, foundation managers, 20 percent owners, or members of the family of any of these individuals. See § 4946(a)(1)(G). The remainder beneficiaries of CLAT One are disqualified persons. They will own no less than 40 percent of the total interests in the trust (because the annuity interest cannot exceed 60 percent). Accordingly, the interests of disqualified persons in CLAT One will exceed the 35 percent minimum requirement of § 4946(a)(1)(G), and CLAT One will be a disqualified person with respect to you. In addition, for purposes of section 4943, the voting stock of Corporation that is owned by CLAT One will be deemed to be owned by its remaindermen—i.e., Child. See Treas. Reg. § 53.4943-8(b).

With respect to ruling 4(c), the members of the families of Child also will be disqualified persons with respect to you because they will be described in § 4946(a)(1)(D) and (d).

For the reasons set forth above, we decline to rule with regard to requested rulings 4(d) and 4(e).

Ruling 5: The three private foundations will not be disqualified persons with respect to each other under § 4946(a)(1)(H).

A private foundation may be a disqualified person with respect to another private foundation for purposes of the excess business holding rules pursuant to § 4946(a)(1)(H). A disqualified

person private foundation must be effectively controlled, directly or indirectly, by the same persons who control the private foundation in question, **or** must be the recipient of contributions substantially all of which were made, directly or indirectly, by substantial contributors, foundation managers, 20 percent owners, and members of their family(ies) who made, directly or indirectly, substantially all of the contributions to the private foundation in question. See § 52.4946-1(b)(1). Here, the Founder A or Founder B will be a substantial contributor to all three private foundations.

Rulings

1. The estate of the surviving spouse of Founder A and Founder B will be entitled to a charitable deduction under § 2055(e)(2) for assets passing to the three CLATs created under the revocable trust of the surviving spouse, including the assets passing from the marital trust created under the revocable trust of the predeceased spouse, subject to the assumptions and qualifications specified previously.

2. Founder A or Founder B will be considered a substantial contributor as defined in § 507(d)(2) and, therefore, will be a disqualified person under § 4946(a)(1)(A) with respect to you.

3. Stock owned by Founder A and Founder B before their deaths shall not be counted in determined whether or not you are subject to the excise tax on excess business holdings as provided under § 4943.

4. With respect to you, Child, the creator of you and also the remainder beneficiary of CLAT One will be a disqualified person. CLAT One also will be a disqualified person with respect to you because disqualified persons will hold more than 35 percent of the beneficial interests in CLAT One. For purposes of § 4943, CLAT One's shares of Corporation will be considered to be held by Child. Also, members of the families of Child will be disqualified persons with respect to you.

5. The three private foundations will be disqualified persons with respect to each other under § 4946(a)(1)(H).

These rulings are based on the facts as they were presented, which are summarized and restated under the heading "Facts," above, and on the understanding that there will be no material changes in these facts. These rulings also are based on applicable law in effect on the date of this letter. If there is a change in a material fact or law (local or Federal) before the transactions considered in this ruling take effect, the ruling will have no force or effect. This letter does not address the applicability of any section of the Code or regulations to the facts submitted other than with respect to the sections described, and, in particular, it does not address tax matters relating to grantor trusts, powers of appointment, or gift and estate taxation other than the issue addressed under § 2055. Further, nothing in this letter should be construed to provide that the terms of the marital trust satisfy the requirements of § 2056. Because it could help resolve questions concerning your federal income tax status, this letter should be kept in your permanent records.

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

In accordance with the Power of Attorney currently on file with the Internal Revenue Service, we are sending a copy of this letter to your authorized representative.

Sincerely,

Michael Seto
Manager, EO Technical

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