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

Date: NOV 25 2003

Contact Person:

Identification Number:

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Telephone Number:

Employer Identification Number:

SIN# 4941.00-00

4946.00-00

4947.02-00

664.03-00

A =

B =

C =

D =

Dear Sir or Madam:

This is in reply to a ruling request dated May 8, 2003, regarding termination of a trust.

On June 8, 1998, A as donor and B as initial trustee executed D, a trust. D represents that it is a charitable remainder unitrust under sections 644(d) (2) and 644(d) (3) of the Internal Revenue Code.

Paragraph 2 of C provides that the Trustee shall distribute to A, during her lifetime, the "Unitrust Amount" in each taxable year. Such amount is required to be paid in quarterly amounts at the end of each calendar quarter. Any income of the Trust in excess of the Unitrust Amount is required to be added to the principal. The Trust defines the Unitrust Amount as the lesser of: (a) the trust income for the taxable year as defined in section 643(b) of the Code and the regulations promulgated thereunder and (b) five percent (5%) of the net fair market value of the assets of the trust valued as of the first day of each taxable year of the trust (the "valuation date"). The Unitrust Amount for a given year also includes 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 five percent (5%) of the net fair market value of the trust assets on the valuation date.

Paragraph 2 of the C provides that upon A's death, the Unitrust Amount, as describe above shall be distributed to B and C in equal shares, or distributed to the survivor thereof; provided however that B and C (or the survivor thereof), as beneficiaries (or beneficiary), furnish payment for any Federal and/or state death taxes that may be attributable to the Trust upon the death of A.

Paragraph 5 of D provides that upon the death of the last to die of B and C, the balance of the trust shall be held in further trust for the benefit of any one (1) or more charitable organizations that satisfy the requirements of section 170(b) (1) (A), 170(c), 2055(a) and 2522(a) of the Code that may be designated by A, the donor. The Trustee is required to pay all

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income to the charitable organization(s) annually. In addition, the Trustee, at his sole discretion, may distribute the principal of the Trust to the charitable organization (s). If the Donor fails to designate one (1) or more charitable organizations as remainder beneficiary of the Trust, the Trustee shall pay the income (and discretionary principal) to such charitable organization or organizations that satisfy the above mentioned requirements as the Trustee, in his sole discretion, may determine.

The physician of B and C has signed an affidavit under penalties of perjury that neither B and C has a medical condition expected to result in a shorter-than-average longevity.

On July 28, 1999, a petition for Reformation of the Trust was filed. Pursuant to the petition, the Trustees, which include C as co-trustee, as plaintiffs, requests to reform D so that the Unitrust Amount distributed pursuant to the terms of the trust will be reflected as 5% of the fair market value of D's assets valued as of January 1 of each year until the death of the surviving beneficiary. On November 22, 1999, a final judgment granting plaintiffs motion to alter the Unitrust Amount to 5%.

Pursuant Paragraph 5.a.(1) of the D A, as donor, did not designate a remainder charitable beneficiary to receive the income and principal of the Trust upon the death of B and C. B and C as co-trustees of the D, designated three specific organizations recognized as exempt under section 501(c)(3) as charitable remainder beneficiaries

Section 4947(a)(2) of the Code provides that in case of a trust which is not exempt from tax under section 501(a), not all of the unexpired interest 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, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2) or 2522, section 507. 508(e) to the extent applicable to a trust described in this paragraph, section 4941, section 4943 except as provided in subsection (b)(3), section 4944 except as provided in subsection (b)(3) and section 4945 shall apply as if such trust were a private foundation.

Section 4947(a)(2)(A) of the Code provides that section 4947(a)(2) shall not apply with respect to any amounts payable under the terms of a split-interest trust to non-charitable beneficiaries.

Section 664(d) (2) of the Code provides that a charitable remainder unitrust is a trust from which a fixed percentage (not less than five percent (5%) nor more than fifty percent (50%) of the net fair market value of the trust is to be paid to one (1) or more individuals for a term of years (not to exceed twenty (20) years) or for the lifetime of such individual or individuals. Upon termination of such individual(s) interest in the Trust, the remainder interest in the trust is to be transferred to, or for the use of, an organization described in section 170(c) of the Code. is exempt from taxation under section 501(a) for the taxable year, with respect to the carrying on its activities, a tax equal to 2 percent of the net investment income of such foundation.

Section 4941(a)(1) of the Code provides that there is hereby imposed a tax on each act of self-dealing between a disqualified person and a private foundation. The rate of tax shall be equal to 5 percent of the amount involved with respect to the act of self-dealing for each year (or part thereof) in the taxable period.

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Section 53.4941-1(a)(8) of the Foundation and Similar Excise taxes regulations provides that for the purposes of section 4941 only, the term "disqualified person" shall not include any organization which is described in section 501(c)(3) (other than an organization described in section 509(a)(4)).

Section 4941(d)(1) of the Code defines "self-dealing" as certain transaction, whether direct or indirect, between a private foundation and a disqualified person, including, among others (1) sale, exchange, or leasing of property, and (2) the transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a private foundation

Section 53.4941(d)-2(f)(2) of the regulations provides that the fact that a disqualified person received an incidental or tenuous benefit from the use by a foundation of its income or assets will not, by itself, make such use an act of self-dealing.

Section 4946(a)(1) of the Code defines a "disqualified person" as a substantial contributor to a private foundation, a foundation manager, or a member for the family of a substantial contributor or foundation manager.

Section 53.4946-1(a)(8) of the Foundation and Similar Excise Taxes Regulations provides for purposes of section 4941 only, the term "disqualified person" shall not include an organization which is described in section 501(c)(3) (other than an organization described in section 509(a)(4)).

Section 4946(a)(2) of the Code defines the term "substantial contributor" as any person who contributed more than \$5,000 to the private foundation, if such amount is more than two percent (2%) of the total contributions received by the private foundation in the year of such contribution of the person deemed a substantial contributor.

As a charitable remainder unitrust under section 664(d)(2) of the Code, D is a split-interest trust described in section 4947(a)(2) and therefore is subject to section 4941, which imposes an excise tax on self-dealing. B and C are disqualified persons with respect to D, under section 4946 of the Code because they are substantial contributors to D as well as being trustees. Because D is a split-interest trust, it is treated as a private foundation under section 4947(a)(2).

The critical question is whether early termination may be expected to result in greater allocation of D's assets to the income beneficiary, to the detriment of the charitable beneficiaries than a non-early termination. D's proposed allocation method is reasonable if the income beneficiary has no knowledge of a medical condition or other circumstance likely to result in a shorter life expectancy than that predicated by the actuarial tables. Otherwise, an early termination would tend to deprive the charitable beneficiaries of their benefit and would be inconsistent with the charitable deduction allowed to the donor.

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Upon A's death, D intends to distribute an amount equal to the present value of the interests held by B and C as well as an amount equal to the present value of the charitable interests to the designated charitable organizations. Such a transaction will not constitute a direct or indirect act of selfdealing under section 4941(d) and will not result in any benefit to the income beneficiaries because state law allows for early termination; all beneficiaries favor early termination; and D will use the income tax regulations formula for determining the present values of the income and remainder interests in a charitable remainder trust.

This ruling is based on the understanding that there will be no material changes in the facts upon which it is based. Section 6110(k) (3) of the Code provides that it may not be used or cited as precedent. Also we express no opinion as to the tax consequences of the transactions under other provisions of the Code. 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. You should keep a copy for your permanent records.

Sincerely,  
**(signed) Robert C. Harper, Jr.**

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