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

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Legend:

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This is in response to a ruling request, as supplemented that was submitted by W's authorized representative.

The transactions described below are the bases for the ruling request and are the transactions for which court approval was sought and subsequently obtained.

FACTS

The "Decedent" executed a Last Will and Testament which provided that all assets subject to the Will (other than the Decedent's tangible personal property) were to be distributed to W. Upon the death of the Decedent a probate estate (the "Estate") was opened in the appropriate court by the personal representatives of the Estate.

W became irrevocable upon the Decedent's death. Article I, Section D of the trust agreement grants the trustees the power to sell, exchange or transfer trust assets after the Decedent's death and prior to final distribution. The trustees are instructed to pay or provide for the payment of the debts, taxes and expenses of the Decedent, and to distribute the assets of the Trust to the appropriate beneficiaries.

Y and Z are beneficiaries of W pursuant to the provisions contained in Article I, Sections E(2) & E(3), respectively, of the trust agreement. Accordingly, Y and Z are indirect beneficiaries of the Estate. The pertinent trust provisions are as follows:

> (2) There shall be distributed to the . . . [Y] an amount equal and determined so that the value of the remainder interest in the unitrust equals the amount of the generation-skipping tax exemption allowable to the Grantor under the provisions of Section 2631 of the Internal Revenue Code, reduced by the amount of any allocations (including any applicable deemed allocations) under Section 2632 of the Internal Revenue Code made by the Grantor, by the Grantor's personal representative, or the by Trustee . . . .
>
> (3) There shall be distributed to the ....[Z] an amount equal to $a, less any amounts distributed to the [Y] ....

In addition to the bequests to Y and Z, the Decedent's descendants are entitled to the following bequests, pursuant to Article II, Section E:

(a) All negative or zero value assets;
(b) The Decedent's interest in [a certain] partnership,...;
(c) One-half of the date of death value of the Decedent's interest in [a second partnership]...;
(d) An amount equal to 90% of the federal and state estate tax which would be payable at Decedent's death if no deferral is elected, to be used to make all estate tax and interest payments; and

(e) Decedent's interest in [a third partnership],...., to be held in trust for and then distributed to the Decedent's descendants.

Pursuant to Article I, Section C(6) of the trust agreement, the estate and inheritance taxes owed by the Decedent are to be charged against the assets passing to the Decedent's descendants. To date, W has made payments totaling $b for such taxes. The Decedent's children have agreed to offset these advancements made by both reducing the amount of the pecuniary bequests owed to them and by assuming a portion of the Decedent's liabilities owed by W.

X is the residuary beneficiary of W pursuant to the provisions contained in Article I, Section E(4), and as such, is entitled to receive all of the remaining assets after the satisfaction of the bequests and the payment of expenses, debts of the decedent, and any income taxes on gain on appreciated assets distributed in satisfaction of the pecuniary bequests. Additionally, X is the charitable beneficiary of Y and Z pursuant to Article II, Sections A(1) and B(1), respectively.

Y is obligated under Article II, Section A to make monthly payments to X for a period of c years. The total payments per year, commencing with the Decedent's death, are equal to d percent of the fair market value of Y redetermined each year.. At the end of c years, the trust estate will be divided into separate shares for the Decedent's children (and their descendants) and held in separate family trusts for the child's lifetime. These separate trusts will be exempt from generation-skipping transfer tax (GST) because the Decedent allocated his GST exemption to Y. Each separate trust will continue for as long as permitted under state law (21 years after the death of the last to die of all of the descendants of the Decedent's grandparents who were living on the Decedent's death).

Similarly, Article II, Section B requires Z to make monthly payments to X for a period of e years. The total payments per year, commencing with the Decedent's death, are fixed amounts equal to f percent of the fair market value of the trust estate at the Decedent's death. At the end of the e year term, the trust estate will be distributed outright to the Decedent's children in equal shares.

Both Y and Z are prohibited under their terms from engaging in any transactions which would constitute self-dealing under § 4941 of the Internal Revenue Code, as well as any transactions which would subject them to excise taxes under § 4942 (failure to distribute income), § 4943 (excess business holdings), and § 4944 (jeopardizing investments).

Due to extensive litigation during the administration of the Decedent's estate, it was not possible to fund Y and Z prior to g. In addition, due to the delay in funding, Y and Z owed substantial accrued monthly obligations, including interest, to X.

In their Petition to the Court, Petition For declaratory Judgment, filed January 6, g, the Taxpayers sought the Court's approval to: (1) distribute certain Related Notes to X , and (2) to distribute certain liabilities and assets earmarked to satisfy such liabilities to X. Both transactions were part of an overall plan which contemplated the distribution of assets to Y and

Z to fund the back-due obligations owed to X, as well as funding Y and Z with assets which were producing sufficient income to satisfy the future obligations owed to X

The assets held by W consisted of various minority interests in partnerships, promissory notes, tenancy-in-common interests in real estate, and stock in both publicly held and closely held entities. The amount of liquid assets (publicly traded stock) available to fund Y and Z and back-due obligations was substantially less the total amount needed to satisfy those bequests. The Taxpayers (W, X, Y, and Z) determined that selling the assets of W in order to fund the bequests was impracticable because many of the assets were closely held minority interests in partnerships, closely held stock, or tenancy-in-common interests in real estate which would make finding a buyer difficult. Additionally, a sale would have further delayed the funding of such bequests.

Since W did not hold sufficient liquid assets to fund the bequests to Y and Z the Taxpayers proposed to fund these bequests by transferring tenancy-in-common interests in real estate and partnership interests which were producing adequate cash flow to satisfy the future obligations owed to X, a portion of some publicly held stock, a third-party nonrecourse secured promissory note, and certain promissory notes owed or guaranteed by individuals or entities which were deemed to be disqualified persons in relation to X pursuant to section 4946 of the Code (the "Related Notes"). The Related Notes were to subsequently be transferred to X in satisfaction of the back-due payments owed by Y and Z.

Two of the assets proposed to be distributed to Z, were pledged as collateral on loans of the Decedent. The related security interests were ultimately released prior to distribution to Z.

The Taxpayers proposed that the majority of the remaining illiquid assets (minority interests in partnerships and tenancy-in-common interests) be used to fund the pecuniary bequests to the Decedent's children. The residue, which was to be distributed to X, consisted of the following: publicly held stock, closely held stock, third party notes, and the Decedent's partnership interest in a company, the latter of which was the subject of a previous ruling request.

Some of the Related Notes to be transferred to X via Y and Z consisted of various obligations of the Decedent's children, trusts in which the Decedent's descendants hold greater than a 35% beneficial interest, and a partnership in which members of the Decedent's family (or trusts for their benefit) hold greater than 35% of the profits interest. All of these entities and individuals are solvent and are making principal and interest payments on the Related Notes as they come due.

The remaining Related Notes represent obligations of third parties which are guaranteed by trusts in which the Decedent's descendants hold greater than a 35% beneficial interest. All of the trusts are solvent and agreed to purchase these obligations from the Decedent's Trust in exchange for new promissory notes, which would then be distributed to Z. Each of the trusts executed separate notes representing their pro rata shares of both the obligations. The new notes contained a repayment schedule amortizing the debt over a d year and h year period respectively, with interest calculated at the same rate as provided under the original note agreement (prime).

Since the Related Notes were from solvent borrowers, who have been making principal payments as they come due, and/or from solvent guarantors, who purchased the third party obligations and make payments on the new note when due, the notes are worth their face value. Such notes are no less liquid than any of the remaining assets of X (i.e., closely held stock or minority interests in partnerships), other than the publicly held stock which was insufficient by itself to satisfy the obligations and which would ultimately be distributed to X via the residue. For those reasons, the Taxpayers sought approval of the Court to distribute the Related Notes to X.

In seeking the Court's approval to distribute certain liabilities and assets earmarked to satisfy such liabilities to X, the Taxpayers proposed to pay a portion of W's liabilities, consisting of obligations to both related and non-related parties, out of publicly-traded and closely held stocks allocated to the residue of the trust. The residue is ultimately distributable to X.

In addition to requesting that the Court approve the payment of a portion of the Decedent's debts from the stocks allocable to the residue, the Taxpayers requested that the payment of the debts be delayed because it was not in the best interest of X for W to sell the stock at that time, due to the fact that it was not possible to obtain an optimal price for the stock. The Taxpayers requested that the debts be transferred to X, along with the stock to be used to satisfy the debts. A portion of the closely held stock was to be pledged as collateral on a bank loan in place of the bank's security interest in the limited partnership interest , thereby reducing any risk that X might have in the assumption of such debt. Finally, a portion of the closely held stock was also to be pledged as collateral in place of X's interest in the limited partnership which was pledged as the collateral on two bank loans. X would eventually pay off the debts distributed to it by selling the stock once its co-trustees determined, in their sole discretion and business judgment, that it was prudent to do so (i.e., they would be able to obtain an optimum price).

On May 18, g, the Court issued an order approving these transactions. Subsequently, on June 30, g, W made a partial distribution of assets to Y and Z who in turn transferred assets to X in partial satisfaction of their back-due obligations to X. On the date of the transfer, the trustees of Y and Z , and X all executed refunding agreements setting forth the terms and conditions under which they were receiving the assets.

On June 30, g, the co-trustees of W agreed to distribute certain assets to Y and Z, subject to the terms of a refunding agreement executed by each on the same date. The transferred assets were identified to said refunding agreements, and were distributed in partial satisfaction of the amounts due to Y and Z under the terms of the Trust Agreement.

Also on June 30, g, Y and Z agreed to distribute certain assets to X, subject to the terms of a refunding agreement executed on the same date. The transferred assets were identified to said refunding agreement, and were distributed in partial satisfaction of the back-due income distribution obligation owed to X under the terms of the trust agreement.

As discussed above, Y and Z were entitled to receive amounts sufficient to fund the initial bequests, plus amounts calculated through June 30, g, including interest, to satisfy the

back-due income distribution obligation owed to Y and Z's charitable beneficiary, X, which resulted from a delay in funding the bequest.

After the distributions described above were made, W still had not fully satisfied its obligations to Y, Z, and X. W experienced delays in satisfying these remaining obligations, primarily due to the general illiquidity of trust assets and difficulties in identifying assets suitable for X to hold. There were outstanding back-due income distribution obligations, including accrued interest owed to X from Y and Z, through November 30, g.

W proposed to satisfy its remaining obligations to Y, Z, and X ("Beneficiaries"), by distributing additional assets to them and by refunding certain assets from the Beneficiaries back to W. The refunding agreements executed by the parties provide on page 5, section 3, as follows:

> The [Beneficiaries] grant the Co-Trustees... the full and sole discretion to reallocate any assets of the Trust for any of the following reasons:... (iii) as otherwise necessary for the Co-Trustees... to satisfy any other claims of the Trust as provided in this Agreement. In such event, the [Beneficiaries] agree to refund any or all assets as shall be requested by the Co-Trustees... in writing and authorize the Co-Trustees... to reallocate such assets as they see fit.

The refunding agreements further provide at section 4, pages 5 and/or 6:

> The [Beneficiaries] further consent to refund to said Co-Trustees... the [Beneficiaries'] proportionate share of any amount necessary to satisfy any liability, loss, claim, damage, demand, cost, expense, including attorneys fees, and tax which may be established in connection with the administration and distribution of the property described on the attached Exhibit "A", including but not limited to the events and contingencies described in the Recitals set forth above, or for any other purpose as may further be described in this Agreement.

Accordingly, since the required distributions to (e.g., "claims" of) the Beneficiaries had not been fully satisfied, the co-trustees had the power under the refunding agreements to re-allocate the assets among all of the beneficiaries of W. This included the power to require the Beneficiaries to refund assets previously distributed to them on June 30, g.

The co-trustees of W proposed to require X to refund to Y and Z the assets described on an attached Exhibit. Y and Z would in turn be required to refund to W those assets indicated on other attached Exhibits. W would then distribute the refunded assets it received from Y and Z to X pursuant to the residuary bequest under the trust agreement. Finally, W would distribute, in full satisfaction of its remaining obligations to Y, Z and X, the following assets in the manner set forth below: 1) an i % member interest in a named L.L.C. to Z; and 2) a j % member interest in a second named L.L.C. to Z and Y , in the percentages of k, respectively, who would in turn distribute such interests to X.

Among the assets distributed by W to Y on June 30, g, were the following interests: 1) an l % general partner interest in a general partnership , 2) an l % interest as tenant-in-common in the real property; and 3) an m % interest as tenant-in-common in certain named real property.

The property held by the partnership and tenancies-in-common described above is the subject of an environmental indemnification agreement dated n ("Environmental Indemnity"), in favor of A. The Environmental Indemnity was executed by the Decedent individually.

As a condition to granting their approval of the distribution of the interests described above to Y, A required that the trustees of Y agree to assume the obligations under the Environmental Indemnity by executing an Assumption of Environmental Indemnification Agreement in the prescribed form. The aggregate fair market value of Y's ownership interests in the partnership property was in excess of $o million. There are no known environmental problems on the property.

Among the assets distributed by W to Z on June 30, g, was an p % limited partner interest in a B limited partnership. The limited partnership has a loan with C in the original principal amount of $q, secured by the partnership property pursuant to a Deed of Trust, Security Agreement and Financing Statement dated r. At the time of filing the Motion, the fair market value of the property was approximately $s. The balance on the American National Insurance Company loan was approximately $t.

Pursuant to the Operating Agreement of the limited liability company, each of the members and their successors are personally obligated for a pro rata share (corresponding to ownership interests) of the "Authorized Recourse Borrowing" of the company. Such borrowing includes a loan in the original principal amount of $u. The aforementioned loan constitutes the only Authorized Recourse Borrowing of the company.

Upon receipt of the j % interest in the limited liability company., the co-trustees of X proposed to assume their obligations as a member under the terms of the operating agreement, including their pro rata obligation for Authorized Recourse Borrowing of the company.

At the time the Motion was filed, the fair market value of the property owned by the limited liability company was approximately $v. The balance on the bank loan was approximately $ee.

In the original Petition the Taxpayers set forth their plan to have the co-trustees of X assume certain debts of W, along with assets which would eventually be used to satisfy such debts. Due to changes in the distribution plan after the Court issued its order approving the Petition, the Taxpayers sought to have the Court revise and clarify which debts were being assumed by X, and to obtain the Court's renewed approval of such assumption. Specifically, several bank loans were paid off and consolidated into a single loan from D. A portion of W's E stock was pledged as security on the new loan. A revised schedule of debt assumed by X upon termination of W and the final distribution of trust assets was set forth.

By the time the Motion was filed, the co-trustees of W had made payments of state and federal estate and inheritance taxes totaling $w. The co-trustees and the Decedent's Children agreed to offset these payments by W in the following manner:

1. The Children would assume the debts of the trust listed on Exhibit S, totaling $x.

2. The Children would agree to reduce by $y the amount of their distributable share of trust assets pursuant to the bequests shown under items (c) and (d) above. The proposed reduction to items (c) and (d) respectively is reflected on pages 3 and 4 of the revised distribution plan (discussed in subsection (8) below), attached hereto as Exhibit T, after taking into account the adjustments for liabilities being assumed by the Children and the estate and inheritance tax payments made by the trust. As a result, the bequest under item (c) was reduced from $z, and the bequest under item (d) was reduced from $aa.

The Decedent's children proposed to purchase a pro rata portion of certain preferred stock, valued at $bb/share, in exchange for the assumption of additional debt owed by W. The children would purchase cc shares, with a fair market value of $dd, in exchange for assuming an equal amount of the debt owed by W to D.

On November 8, g, the Taxpayers filed an Unopposed Motion For Supplemental Order with the Court requesting approval of these additional transactions which were necessary to effectuate the final distribution of assets of W pursuant to the terms of the trust agreement. On November 10, g, the Court issued an order approving the transactions described in the Motion. The transactions set forth in the Petition, as modified and amended by the Motion, were subsequently completed effective December 15, g.

As reported by W in a subsequent submission, the obligors are making timely principal and interest payments in accordance with the terms of the Related Notes. Many of the Related Notes have been paid in full, often times prepaid, which has resulted in X receiving cash. The payments have increased X's cash flow which has enhanced its ability to pay its operating expenses and meet its charitable obligations. Since the Related Notes are being paid in accordance with the note terms, the notes are more liquid than any of the other assets available to fund X. The other assets of W consisted of numerous minority interests in various entities. These other assets would be difficult to sell and be converted to cash. In addition, the Related Notes are providing X with a stable rate of return which it would not receive from the other available assets. Further, the Related Notes could be sold to third parties for their face values since the obligors are performing on the obligations and have sufficient assets to continue to meet their obligations under the notes.

In W's supplemental submissions it was represented that the Related Notes distributed to X will be adequately secured by assets owned by the related party obligors. Therefore, in the event of a default, X will have access to the assets securing the Related Notes. W has stated

that this representation will place X in a posture of receiving assets that are at least as liquid, and in fact more liquid than the other assets available to fund the bequest.

LAW

Section 4941(a) of the Code provides for a tax on each act of self-dealing between a "disqualified person" and a private foundation. Self-dealing is defined in section 4941(d)(1) to include any direct or indirect sale or exchange of property between a "disqualified person" and a private foundation; and any direct or indirect transfer to a "disqualified person" of the income or assets of a private foundation.

Section 4946 defines "disqualified person," with respect to a private foundation, as including, among others:

1) a substantial contributor to the foundation;

2) a foundation manager;

3) an owner of more than 20% of (i) the total combined voting power of a corporation, (ii) the profits interest of a partnership, or (iii) the beneficial interest of a trust, which is a substantial contributor;

4) a member of the family of any individual described in subsections 1), 2) or 3);

5) a corporation in which persons described in subsections 1), 2), 3) or 4) own more than 35% of the total combined voting power;

6) a partnership in which persons described in subsections 1), 2), 3) or 4) own more than 35% of the profits interest;

7) a trust or estate in which persons described in subsections 1), 2), 3) or 4) hold more than 35% of the beneficial interest.

Section 4946(d) defines the term "family" as including the spouse, ancestors, children, grandchildren, and great grandchildren.

Section 4941(d)(1)(B) of the Code provides that the lending of money or any other extension of credit between a private foundation and a disqualified person is an act of self-dealing. Section 53.4941(d)-2(c)(1) of the Foundation and Similar Excise Taxes Regulations further provides that, 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 4941(d)(2)(A) of the Code provides that the transfer of real or personal property by a disqualified person to a private foundation shall be treated as an act of self-dealing if the property is subject to a mortgage or other similar lien which the foundation assumes or which

was placed on the property by a disqualified person within the 10-year period ending on the date of the transfer.

Section 4947 of the Code provides that charitable lead trusts are subject to the self-dealing rules of section 4941.

Section 53.4941(d)-1(b)(3) of the Foundation and Similar Excise Taxes Regulations, provides that 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, will not constitute self-dealing if:

i) The administrator or executor of an estate or trustee of a revocable trust eithe- (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 (a) of section 1.641(b)-3 of this chapter (or in the case of a revocable trust, before it is considered subject to section 4947);

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

ANALYSIS

The Decedent, a substantial contributor of X, was a disqualified person (as such term is defined in section 4941 of the Code) with respect to X. The Decedent's children, partnerships in which greater than 35% of the profits interest is held by members of the Decedent's family, and trusts in which greater than 35% of the beneficial interest is held by family members of the Decedent are all disqualified persons.

The transactions set forth above were described in the Petition to the court and in the subsequent Motion. The Court issued orders approving these transactions, finding that the transactions meet the requirements pursuant to section 53.4941d-1(b)(3) of the regulations. It was represented to the Court that:

- The co-trustees of W possessed the power of sale with respect to the property pursuant to Article I, Section D of the trust agreement. Additionally, the co-trustees possessed the power to reallocate the property among the beneficiaries pursuant to Article VI, Section D of the trust agreement.

- The Court had jurisdiction over W pursuant to state statute which permits a trustee to seek and obtain a declaration of rights or legal relations (a) to direct the trustees to do (or refrain from doing) any particular act in their fiduciary capacity, or (b) to determine any question arising in the administration of the trust.

- The distributions to X occurred before the Estate was terminated for Federal income tax purposes pursuant to section 1.641(b)-3(a) of the regulations and before W was subject to section 4947 of the Code.

- The related party notes distributed to X were equal in value to the fair market value of X's interest or expectancy in W's assets at the time of the transaction because the borrowers were solvent, the notes were not in default, and the borrowers were making principal payments as they came due. Thus, the related party notes were worth their face values. With respect to the third-party obligations, the guarantors were all solvent, had agreed to purchase such obligations and became the primary obligor on a new note, and were currently making principal and interest payments as they came due.

- The distribution of related party notes resulted in X receiving an interest or expectancy at least as liquid as the one it gave up. Since W did not hold sufficient liquid assets to satisfy the bequests, the only available assets, other than the notes, were various minority interests in closely held partnerships, tenancy in common interests in real estate, stock in a closely held corporation, etc. These assets were illiquid in the sense that such assets could not be readily sold. Conversely, the related party notes were from solvent borrowers who had been making principal payments as they came due, or from solvent guarantors who had purchased the third-party obligations. Therefore, the notes were no less liquid than the other available assets.

The Court entered an order, dated May 18, g, approving (1) the distribution of related party notes to X in satisfaction of the back-due obligations of Y and Z and (2), the transfer of liabilities, together with assets to satisfy such liabilities to X, concluding that both transactions came within the exception stated in section 53.4941(d)-1(b)(3),of the regulations.

W represents the following:

X received assets equal to the fair market value of X's interest or expectancy in W's assets at the time of the transaction because the net effect of the transfer of the debt and stock

to X was to distribute the same dollar value that X would have received if W had first sold the stock to pay off the debts and then satisfied the residuary bequest. However, since it was not the optimal time to sell the stock, X is actually in a better position by waiting to take advantage of potential appreciation in the stock.

X received an interest or expectancy at least as liquid as the one it gave up because if the debt was not assumed by X, liquid assets would be consumed to pay the debt, reducing the amount of liquid assets passing to X By distributing the closely held stock to X and giving the co-trustees the opportunity to determine the best time to sell the stock to achieve the maximum price, the overall liquidity of the assets passing to X was enhanced. Conversely, if the closely held stock were sold to pay off the debts prior to the distribution to X, the Taxpayers would be forced to accept whatever price they could obtain at such time, resulting in less assets passing to X. Further, X did not give up a more liquid interest by assuming the debts because it also received the stock to satisfy such debts. In addition, pledging a portion of the stock as collateral on the D loan, which replaced three other bank loans, in exchange for the release of the security interests in the limited liability company. and the limited partnership interests, further reduced any risk X may have had from the assumption of the debt. Finally, as the residuary beneficiary, X ultimately bore the burden of repayment of the loans, so it made sense for the loans to be secured by the stock which was being distributed to X and which was earmarked for the payment of such liabilities.

The j% member interest in the limited liability company distributed to X via Y and Z was equal to the fair market value of X's interest or expectancy in the property at the time of the transaction because the amount to be distributed was determined by the trust agreement, and because the interest would otherwise have been distributed to X via the residue of W. Similarly, the distribution of the j% member interest in the limited liability company in exchange for the j% interest in the tenancy in common interest (previously earmarked to go to Z) was equal to the fair market value of Z's interest or expectancy in W's assets at the time of the transaction because the amount to be distributed was determined by the trust agreement, and the allocation of such assets was within the discretion of the trustee.

The distribution of the j% member interest in the limited liability company in exchange for other listed assets resulted in X receiving an interest or expectancy at least as liquid as the one it gave up because the assets being "given up" by X will ultimately be distributed to X via the residue. In addition, the refund of the j% interest in the tenancy in common in exchange for the j% member interest in the limited liability company resulted in Z receiving an interest or expectancy at least as liquid as the one it gave up because both interests were subject to substantially similar restrictions on transfer under the terms of the applicable governing agreements.

With respect to Y's assumption of liability under the Environmental Indemnification Agreement, W represents that Y received assets equal to the fair market value of its interest or expectancy in W's assets at the time of the transaction because there was no known environmental problem associated with the partnership and tenant in common interests and the assumption of the Environmental Indemnity was required as a condition of receiving the ownership interests.

Y received an interest or expectancy at least as liquid as the one it gave up because receipt of the partnership and tenant-in-common interests was conditioned on executing the Environmental Indemnity.

With respect to the distribution of a p% limited partner interest to the Z on June 30, g, where the partnership property was subject to a mortgage lien placed on the property by a disqualified person within ten years of the transfer, Z received assets equal to the fair market value of its interest or expectancy in the property at the time of the transaction because the fair market value of the partnership interest was determined after subtracting the unpaid mortgage balance from the value of the partnership property, thereby preventing the overvaluation of the asset and allowing additional assets to be allocated to Z. Z received an interest or expectancy at least as liquid as the one it gave up because none of the assets distributed to non-charitable beneficiaries was more liquid than the partnership interest.

The assumption by X of liability under the limited liability company operating agreement for their pro rata share of the bank loan resulted in X receiving assets equal to the fair market value of its interest or expectancy in W's assets at the time of the transaction because the membership interest in the Company passing to X via Y and Z would otherwise have passed to X via the residue of W, which would have been reduced by the pro rata share of the unpaid balance on the D loan in any event. X received an interest or expectancy at least as liquid as the one it gave up because none of the assets distributed to non-charitable beneficiaries was more liquid than the interest in the limited liability company.

The assumption of debt and partial surrender by the children of the Decedent of their rights to the distribution of assets from W in exchange for net relief from liability to the trust occurred before the Estate was terminated for Federal income tax purposes and before W was subject to section 4947 of the Code.

W represents that X received assets equal to the fair market value of its interest or expectancy in W's assets at the time of the transaction because the transaction reduced the amount of liabilities that X would otherwise be required to assume, and increased the amount of assets that X would otherwise receive.

X received an interest or expectancy at least as liquid as the one it gave up because the assumption of trust liabilities by the children of the Decedent is economically equivalent to the payment of cash to the trust, and the assets surrendered by the children were no less liquid than the remaining assets distributed to the children (which consisted entirely of fractional interests in real estate business entities).

The proposed sale of stock by W to the children of the decedent in exchange for the assumption of liabilities occurred before W was terminated for Federal income tax purposes and before W was subject to section 4947.

X received assets equal in value to the fair market value of its interest or expectancy in W's assets at the time of the transaction because the transaction reduced the amount of liabilities that X would otherwise bear the burden of as residuary beneficiary of the trust. Although X would have received more assets if the stock had not been sold to the Decedent's

children, the net effect of the transfer was the same because the additional assets received would be offset by the assumption of additional liabilities

In summation, in this very factual ruling request W has represented that that the trustees involved in the transaction possess the power of sale and reallocation with respect to the properties. The transaction will have been approved by an appropriate court having jurisdiction. The transactions will occur during the Estate administration period, before the Estate is considered terminated for federal income tax purposes.

Assuming that the transactions involve fair market values, W has represented that the Related Notes will be negotiable, transferable, and secured by assets owned by the obligors. W has represented that the Related Notes will be interests as liquid as the interests exchanged.

Based on the information submitted and the representations made therein, we rule as follows:

1. The distributions of Related Notes to X in satisfaction of the accrued obligations of Y and Z to X meets the exception described in section 53.494l(d)-l(b)(3) of the regulations and therefore are not acts of self-dealing.

2. The transfer of liabilities to X together with assets earmarked to pay such liabilities, via the residue of W meets the exception described in section 53.494l(d)-l(b)(3) of the regulations and therefore is not an act of self-dealing.

3. The reallocation of assets subsequent to partial funding of Y and Z meets the exception described in section 53.494l(d)-l(b)(3) of the regulations and therefore is not an act of self-dealing.

4. The assumption of liability by Y under an environmental indemnification agreement meets the exception described in section 53.494l(d)-l(b)(3) of the regulations and therefore is not an act of self-dealing.

5. The receipt by Z of property subject to a lien created within 10 years prior to the transfer meets the exception described in section 53.494l(d)-l(b)(3) of the regulations and therefore is not an act of self-dealing.

6. The assumption of liability by X under a limited liability company operating agreement meets the exception described in section 53.494l(d)-l(b)(3) of the regulations and therefore is not an act of self-dealing.

7. The assumption of debt and partial surrender by the children of the Decedent of their rights to distributions of assets in exchange for net relief from liability to W meets the exception described in section 53.494l(d)-l(b)(3) of the regulations and therefore is not an act of self-dealing.

8. The sale of stock by W to the children of the Decedent in exchange for the assumption of debt owed by W meets the exception described in section 53.4941(d)-1(b)(3) of the regulations and therefore is not an act of self-dealing.

This ruling is limited to the applicability of the provisions of the estate administration exception from self-dealing under section 53.4941(d)-1(b)(3) of the regulations and does not purport to rule on any facts that were not represented in the ruling request as supplemented or on changes of those facts that were in this ruling. We have not determined whether the methodology W or W's independent appraisers may have used to determine fair market value is proper.

These rulings are directed only to the organizations and trustees that requested them. Section 6110(k)(3) of the Code provides that they may not be used or cited 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,

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