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

Significant Index Nos.: 4941.04-00
4945.04-00
Date: FEB 3 2000 4943.04-03

Contact Person:

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ID Number:

Telephone Number:

Employer Identification Number:

Legend:

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Dear Sir or Madam:

This is in reference to a letter dated December 30, 1998, submitted on behalf of X by its authorized representative, requesting rulings with respect to the federal tax consequence of the proposed transactions described below.

The information provided indicates that X (the "Charitable Lead Trust") had its origins in Z (the "1984 Trust"). The 1984 Trust was formed in 1984 as a revocable trust pursuant to an agreement between B, as Settlor, and B and C, as Trustees. The 1984 Trust became irrevocable upon B's death in 1989.

Pursuant to Article II of the 1984 Trust Agreement, during the life of B, all of the 1984 Trust's net income was paid to B, and certain amounts of principal were payable to B and to his wife, D. In his will, B bequeathed his residuary estate to the 1984 Trust. Included in that residuary estate was an interest in M, a limited partnership, which later merged into another limited partnership, N. Pursuant to the 1984 Trust Agreement, at B's death, certain assets were distributed outright and a trust in the amount of B's $1,000,000 exemption from generation skipping transfer tax was established under Article V of the 1984 Trust Agreement for the benefit of D during her life, with

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the remainder to be held in further trust for B's descendants at D's death. The remaining assets, including most of B's limited partnership interest in N, were held in trust for the benefit of D under Article VIII of the 1984 Trust Agreement (the "Article VIII Trust").

All of the net income of the Article VIII Trust and certain amounts of principal were payable to D during her life. The Executors of B's estate made a "QTIP election" to qualify the Article VIII Trust for the marital deduction under section 2056(b)(7) of the Internal Revenue Code (the "Code").

D died in 1996. Because of the marital deduction allowed in B's estate, the Article VIII Trust is includible in D's gross estate for federal estate tax purposes under section 2044 of the Code. Article VIII of the 1984 Trust Agreement provides that, upon the death of D and after the payment of estate, inheritance, and other taxes, and distribution of certain tangible personal property, the Trustees shall add to the Charitable Lead Trust, created under Article IX of the 1984 Trust Agreement upon D's death, the maximum amount of principal of the Article VIII Trust that can provide a charitable deduction from the value of the taxable estate of D.

Pursuant to Article IX of the 1984 Trust Agreement, the Charitable Lead Trust operates as follows. In each taxable year during a period designated the "Charitable Term," the Trustees are required to pay out 8.15% of the net fair market value of the assets of the Charitable Lead Trust valued as of the first day of each such year (the "Unitrust Amount") to one or more organizations that are described in sections 170(c), 2522(a) and 2055(a) of the Code, as selected by the Trustees. The Charitable Term commenced on the date of death of D and expires nine years from that date (2005). The Unitrust Amount is to be paid from the income of the Charitable Lead Trust and, to the extent income is not sufficient, from the principal of the Charitable Lead Trust. Any excess income after payment of the Unitrust Amount is to be added to principal. Upon expiration of the Charitable Term, the then principal of the Charitable Lead Trust is to be distributed to B's descendants per stirpes.

The 1984 Trust Agreement prohibits the Trustees from engaging in any act of self-dealing, acquiring or retaining any excess business holdings, making any jeopardizing investments, or making any taxable expenditures that would subject the Charitable Lead Trust to any tax under section 4941, 4943, 4944 or 4945 of the Code. The current Trustees of the Charitable Lead Trust are E (B's daughter) and F (B's granddaughter).

Distributions were made from the principal of the Article VIII Trust to the Charitable Lead Trust, consisting of the limited partnership interest in N and certain real property. The Charitable Lead Trust was fully funded on December 31, 1997. As of September 30, 1998, the latest date for which values of N partnership interests are available, the value of the Charitable Lead Trust's capital account in N was about 13.3% of the value of the total partnership interests in N.

It is expected that the Charitable Lead Trust will liquidate the real property it received from the Article VIII Trust and invest the net proceeds in N. However, it is anticipated that, even if the Charitable Lead Trust makes such additional investment in N, the value of the Charitable Lead Trust's interest in N will be less than 20% of the value of the total partnership interests in N.

The purpose of N is to provide professional investment management and advisory services on a cost-efficient basis to the members of H's family (the "H Family"), consisting of the descendants of H and their spouses, and to related entities. N maintains a diversified investment portfolio consisting of a variety of asset classes, such as publicly traded securities, hedge funds, private company mezzanine and equity securities, and limited partnerships.

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As the investment vehicle for the H Family, N, together with P and R (both of which are corporations discussed below), provides a variety of services exclusively for the H Family and related entities. G, who is a professional investment manager and is not a member of the H Family, is the President and Chief Executive Officer of N and also of P.

N currently has one general partner, P, (the General Partner) and 75 limited partners (together, the "Partners"). P was created to function exclusively as the sole General Partner of N. The limited partners in N consist of individuals, trusts, one estate and another limited partnership. All of such individuals are descendants of H or are the spouses of such descendants, and all of the trusts have been established for the benefit of one or more of such individuals. B was a son of H, and many of the limited partners are lineal descendants of B or are trusts in which one or more of B's descendants have a beneficial interest.

The gross income of N is from dividends, interest, and realized and unrealized gains recognized in connection with N's investment activities. Pursuant to Article VI of N's partnership agreement, the net income and net losses of N are generally allocated among the Partners in accordance with their respective Capital Percentages. The Capital Percentage with respect to any Partner equals the Partner's Capital, as defined in N's partnership agreement, divided by the sum of all Partners' Capital.

N charges its limited partners a fee for its investment services based upon N's "expense ratio." The expense ratio is floating and is N's actual overhead (occupancy, equipment, salaries, etc.) multiplied by each limited partner's Capital Percentage. This overhead includes the compensation paid to G, which includes salary and bonus based upon N's performance.

Under Section 4.9 of the N Agreement, N reimburses its General Partner, P, for all costs and expenses paid by P on behalf of N, and thus, P is reimbursed at cost. Section 4.9 prohibits any stockholder of P from being paid a salary or any other form of compensation for services rendered that are reimbursable by N.

Section 4.6 of the N Agreement limits the liability of limited partners by providing that no limited partner will be required to make additional capital contributions and that no limited partner will be liable for any liabilities, obligations, expenses or losses of N in excess of such limited partner's interest in any undistributed income, profits or property of N.

Section 4.11 of the N Agreement, as amended as of October 6, 1997, prohibits N from making any loans to, or guaranteeing any indebtedness of, any Partners. There were no such loans or guarantees outstanding as of the date of the amendment.

Lineal descendants of B and the estate of a lineal descendant of B own an aggregate of 600 of the 1,000 issued and outstanding shares in P, all of which have equal voting rights. The remaining shares are owned by related individuals who are not descendants of B (i.e., descendants of B's brother). Thus, descendants of B own 60% of the voting power of P.

Section 3.1 of the N Agreement states that, unless otherwise provided, the management, operating policy and investment decisions of N are vested exclusively in the General Partner. The General Partner has the power, on behalf and in the name of N, to carry out any and all of the purposes of N and to perform all acts and to enter and perform all contracts and other undertakings that the General Partner deems necessary or advisable. Among the specific powers of the General

Partner listed in Section 3.1 are: (i) to utilize the capital and assets of N in furtherance of N's purposes; (ii) to receive, buy, sell, exchange, trade, and otherwise deal in and with N's properties; (iii) to employ or consult such persons as the General Partner deems advisable for the operation and management of N; (vi) to possess, transfer, mortgage, pledge or otherwise deal in, and to exercise all rights, powers, privileges and other incidents of ownership or possession with respect to securities, options or other property held or owned by N; (v) to enter into, make and perform all contracts, agreements and other undertakings as the General Partner may determine to be necessary, advisable or incidental to the carrying out of N's purposes; and (v) to execute all other instruments of any kind or character that the General Partner determines to be necessary or appropriate in connection with the business of N.

Under Section 4.3 of the N Agreement, the responsibilities of the General Partner include managing N on a daily basis, administering N's investments, and providing reports to N's limited partners. Pursuant to Section 4.1 of the N Agreement, the General Partner is not permitted to engage in any trade, business or occupation other than the business of N.

As already noted, Section 4.9 of the N Agreement provides that N will reimburse the General Partner for all costs and expenses paid by the General Partner on behalf of N. Such costs and expenses include all routine and recurring costs and expenses incurred with respect to the ordinary conduct of N's business, such as clerical, bookkeeping and administration expenses, payroll taxes and employee costs, rent, telephone charges, utility charges, costs of office supplies, postage, and office equipment expenses. N will reimburse the General Partner only for costs and expenses that are reasonable and necessary and that are not excessive.

R is a corporation that provides general accounting, tax, and clerical services to the individual members of, and entities associated with the H Family, including the Charitable Lead Trust and N. Individuals who are descendants of B and trusts for the benefit of descendants of B own an aggregate of 44.7% of the voting power of R. R is not a partner in N. R operates on a cost-sharing basis without any built-in profit. In addition to providing services, R subleases office space to N.

Pursuant to section 4947(a)(2) of the Code and section 53.4947-1(c) of the Foundation and Similar Excise Taxes Regulations, section 4941 (regarding self dealing), section 4943 (regarding excess business holdings) and section 4945 (regarding taxable expenditures) apply to a split-interest trust as if it were a private foundation if (1) the trust is not exempt from federal income taxation under section 501(a); (2) not all of the unexpired interests in the trust are devoted to one or more of the purposes described in section 170(c)(2)(B); and (3) the trust has amounts in trust for which a deduction was allowed under section 170, 545(c)(2), 556(b)(2), 642(c), 2055, 2106(a)(2) or 2522.

Section 4946(a)(1)(A)-(G) of the Code and section 53.4946-1(a)(1)(i)-(vii) of the regulations define the term "disqualified person," with respect to a private foundation, as a person who is (1) a substantial contributor to the foundation, as defined in section 507(d)(2); (2) a foundation manager; (3) an owner of more than 20% of the total combined voting power of a corporation, profits interest of a partnership, or beneficial interest of a trust or unincorporated enterprise which is a substantial contributor to the foundation; (4) a member of the family of any of the above; or (5) a corporation, partnership, trust or estate of which persons described above own more than 35% of the voting power, profits interest or beneficial interest.

Under section 507(d)(2) and section 1.507-6(a)(1) of the Income Tax Regulations, a "substantial contributor" is defined as a person who contributes more than $5,000 to the private foundation where such amount is more than two percent of the total contributions received by the

foundation. In the case of a trust, the term "substantial contributor" also means the creator of the trust.

Section 4946(b) of the Code and section 53.4946-1(f)(1) of the regulations define the term "foundation manager" as 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), and with respect to any act (or failure to act), the employees of the foundation having authority or responsibility with respect to such act (or failure to act).

Section 4946(d) of the Code provides that, for purposes of section 4946(a)(1), the family of any individual includes only his or her spouse, ancestors, children, grandchildren, great grandchildren, and the spouses of children, grandchildren, and great grandchildren.

Section 4941(a)(1) of the Code imposes a tax on each act of self-dealing between a disqualified person and a private foundation.

Section 4941(d)(1)(A) of the Code and section 53.4941(d)-2 of the regulations provide that the term "self-dealing" includes any direct or indirect sale, exchange or leasing of property between a private foundation and a disqualified person.

Section 4941(d)(1)(C) of the Code and section 53.4941(d)-2(d)(1) of the regulations provide that the term "self-dealing" includes any direct or indirect furnishing of goods, services or facilities between a private foundation and a disqualified person.

Section 4941(d)(1)(D) of the Code and section 53.4941(d)-(2)(e) of the regulations provide that the term "self-dealing" includes any direct or indirect payment of compensation (or payment or reimbursement of expenses) by a private foundation to a disqualified person.

Section 4941(d)(1)(E) of the Code and section 4941(d)-2(f)(1) of the regulations, define "self-dealing" as any direct or indirect 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)(1) further provides that the purchase of or sale of stock or other securities by a private foundation is an act of self-dealing if such purchase or sale is made in an attempt to manipulate the price of the stock or other securities to the advantage of a disqualified person. Pursuant to section 53.4941(d)-2(f)(2) of the regulations, the fact that a disqualified person receives an incidental or tenuous benefit from the use by a foundation of the foundation's income or assets will not, by itself, make such use an act of self-dealing.

Section 4941(d)(2)(E) of the Code and section 53.4941(d)-3(c)(1) of the regulations provide that, except in the case of a government official, the payment of compensation (and the payment or reimbursement of expenses) by a private foundation to a disqualified person for personal services that are reasonable and necessary to carrying out the exempt purpose of the private foundation is not an act of self-dealing if the compensation (or payment or reimbursement) is not excessive. Section 53.4941(d)-3(c)(1) further provides that the term "personal services" includes the services of a broker serving as agent for the private foundation and that this exception to self-dealing applies without regard to whether the person who receives the compensation (or payment or reimbursement) is an individual. Section 53.4941(d)-3(c)(1) refers to section 1.162-7 of the regulations for determining whether compensation is excessive. Under section 1.162-7, compensation payments are not excessive if they are reasonable and are in fact payments purely for services.

In example (2) of section 53.4941(d)-3(c)(2) of the regulations, C is a manager of private foundation X and an owner of an investment counseling business. Acting in his capacity as an investment counselor, C manages X's investment portfolio for which he received an amount from X which is determined not to be excessive. The payment of such compensation to C does not constitute an act of self-dealing.

Section 53.4941(d)-1(b)(5) of the regulations provides, for purposes relative to acts of indirect self-dealing under section 4941(d) of the Code, two basic tests for determining whether an organization is "controlled" by a private foundation. Control exists (i) if the foundation or one or more of its foundation managers, acting only in such capacity, may, only by aggregating their votes or positions of authority, require the organization to engage in a transaction which if engaged in with the private foundation would constitute self-dealing; or (ii) in the case of a transaction between the organization and a disqualified person, if such disqualified person, together with one or more persons who are disqualified persons by reason of such person's relationship within the meaning of section 4946(a)(1)(C) through (G) to such disqualified person, may, only by aggregating their votes or positions of authority with that of the private foundation, require the organization to engage in such a transaction. Section 53.4941(d)-1(b)(5) of the regulations also provides that an organization will be considered to be controlled by a private foundation or by a private foundation and disqualified persons if such persons are able, in fact, to control the organization, even if their aggregate voting power is less than 50% of the total voting power of the organization's governing body, or if one or more of such persons has the right to exercise veto power over the actions of such organization relevant to any potential acts of self-dealing.

In Rev. Rul. 76-158, 1976-1 C.B. 354, a private foundation owned 35% of the voting stock of a corporation. A foundation manager owned the remaining 65% but did not hold a position of authority in the corporation by virtue of being a foundation manager. Rev. Rul. 76-158 states that the corporation was not controlled by the private foundation under the first test of section 53.4941(d)-1(b)(5) of the regulations because the foundation manager held no stock in his capacity as foundation manager and did not occupy a position of authority in the corporation by virtue of being a foundation manager, and because the private foundation did not, either alone or with the foundation manager, acting only in such capacity, control the corporation. Rev. Rul. 76-158 also states that the corporation was not controlled by the private foundation under the second test of section 53.4941(d)-1(b)(5) of the regulations. Through the foundation manager's ownership of 65% of the voting stock, he could control the corporation without aggregating his votes with those of the private foundation. Moreover, the private foundation did not have the right to exercise veto power over the actions of the corporation.

Section 4943(a)(1) of the Code provides for the imposition of a tax on the excess business holdings of any private foundation in a business enterprise during any taxable year which ends during the taxable period.

Section 4943(c)(1) and section 53.4943-3(a)(1) of the regulations define the term "excess business holdings," with respect to the holdings of any private foundation in any business enterprise, as the amount of stock or other interest in the enterprise which the foundation would have to dispose of to a person other than a disqualified person in order for the remaining holdings of the foundation in such enterprise to be permitted holdings.

Under section 4943(c)(2)(A) and (3)(A) of the Code and section 53.4943-3(c)(2) of the regulations, the permitted holdings of a private foundation in a partnership are generally 20% of the

profits interest reduced by the percentage of the profits interest owned by all disqualified persons. If the effective control of the partnership is in one or more persons who are not disqualified persons with respect to the foundation, then the prior sentence is applied by substituting 35% for 20%.

Section 4943(d)(3)(B) of the Code and section 53.4943-10(c)(1) of the regulations provide that the term "business enterprise" does not include a trade or business at least 95% of the gross income of which is derived from passive sources. Stock in a passive holding company is not to be considered a holding in a business enterprise even if the company is controlled by the foundation. Instead, the foundation is treated as owning its proportionate share of any interests in a business enterprise held by such company under section 4943(d)(1).

Section 53.4943-10(c)(2) of the regulations defines gross income from passive sources as including the items excluded by section 512(b)(1), such as dividends, interest and annuities, and by section 512(b)(5), such as all gains and losses from the sale, exchange or other disposition of property recognized in connection with the organization's investment activities. Income thus classified as passive does not lose its character as passive income merely because section 512(b)(4) or 514 (relating to debt-financed income) apply to such income.

In S. Rep. No., 552, 91st Cong., 1st Sess. 41 (1969), the Senate Finance committee stated the following regarding the meaning of "business holding" under section 4943 of the Code:

> The committee also provided that stock in a passive holding company is not to be considered a business holding, even if the holding company is controlled by the foundation. Instead, the foundation is to be treated as owning its proportionate share of the underlying assets of the holding company. The committee also made it clear that passive investments generally are not to be considered business holdings. For example, the holding of a bond issue is not a business holding, nor is the holding of stock of a company which itself derives income in the nature of a royalty to be treated as a business holding.

Rev. Rul. 78-44, 1978-1 C.B. 168, held that a 501(c)(3) organization's leasing of heavy machinery under long-term lease agreements requiring the lessee to provide insurance, pay the applicable taxes, and make and pay for most repairs, with the functions of securing leases and processing rental payments performed for the organization without compensation, was not excepted from the term "unrelated trade or business" by reason of the volunteer labor exception under section 513(a)(1) of the Code. Once the organization found a lessee and leased the property, the only remaining requirement generally was to receive, record, and deposit the rents. The work in connection with finding a lessee, negotiating a lease, and processing the rental payments was performed for the organization without compensation. The Service reasoned that the rental of personal property is a trade or business, and that the volunteer labor exception applies only where the performance of services is a material income-producing factor in carrying on the business, and there was no significant amount of labor regularly required or involved in the kind of business carried on by the organization.

Section 4945(a)(1) of the Code imposes an excise tax on each taxable expenditure of a private foundation.

Section 4945(d)(5) of the Code and section 53.4945-6(a) of the Regulations state that the term "taxable expenditure" means any amount paid or incurred by a private foundation for any purpose other than one specified in section 170(c)(2)(B).

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Section 53.4945-6(b)(1)(i) and (ii) of the regulations provide that expenditures to acquire investment assets entered into for the purpose of obtaining income or funds to be used in furtherance of purposes described in section 170(c)(2)(B), or reasonable expenses related thereto, will not be treated as taxable expenditures under section 4945(d)(5).

The 75 limited partners in N currently include individuals, trusts, one estate and a limited partnership. Under Code section 4946(a)(1)(B) and (D), 17 of the individuals who are limited partners in N are disqualified persons with respect to the Charitable Lead Trust because they are either (i) Trustees of the Charitable Lead Trust and thus "foundation mangers," or (ii) family members, as defined in Code section 4946(d), of such Trustees or of B, the creator of the Charitable Lead Trust. In addition, the limited partnership that is a limited partner in N is a disqualified person because, pursuant to Code section 4946(a)(1)(F), individuals who are disqualified persons,as described above, hold more than 35% of the profits interest in such partnership. Further, at least 28 of the trusts that are limited partners in N are disqualified persons with respect to the Charitable Lead Trust because, pursuant to Code section 4946(a)(1)(G), individuals who are disqualified persons, as described above, hold more than 35% of the beneficial interest in such trusts.

N itself is a disqualified person with respect to the Charitable Lead Trust pursuant to Code section 4946(a)(1)(F) because N is a partnership in which persons that are disqualified persons, as described above, own more than 35% of the profits interest.

P, the corporate General Partner of N, is a disqualified person with respect to the Charitable Lead Trust pursuant to Code section 4946(a)(1)(E) because P is a corporation of which individuals and an estate which are disqualified persons, as described above, together own more than 35% of the total combined voting power.

R is a disqualified person with respect to the Charitable Lead Trust pursuant to Code section 4946(a)(1)(E) because R is a corporation of which individuals and a trust which are disqualified persons, as described above, together own more than 35% of the total combined voting power.

The Charitable Lead Trust pays R a fee for general accounting, tax and clerical services. In addition, the Charitable Lead Trust, as a limited partner of N, pays N a fee for investment management and advisory services and, through N, reimburses the General Partner, P, for the Charitable Lead Trust's pro rata share of general accounting, tax, and clerical services provided by R to N. As described above, N, P, and R are disqualified persons with respect to the Charitable Lead Trust.

P was formed to serve exclusively as the General Partner of N, and pursuant to Section 4.1 of the N Agreement, P is prohibited from engaging on any other trade, business or occupation. Thus, all of the expenses of P are related to the provision of investment services to the Partners, and N reimburses P only for such expenses.

R provides its administrative and clerical services to the Charitable Lead Trust and N on a cost-sharing basis without any built-in profit. The Charitable Lead Trust and N pay R only for such services that are reasonable and necessary to the operation of the Charitable Lead Trust, respectively.

The making of payments or reimbursements by a private foundation to disqualified persons

generally constitutes an act of self-dealing under Code section 4941(d)(1)(D). Code section 4941(d)(2)(E), however, provides for an exception from self-dealing for the payment of compensation or the reimbursement of expenses by a private foundation to a disqualified person for "personal services" that are reasonable and necessary to carrying out the exempt purpose of the private foundation if the compensation or reimbursement is not excessive.

The term "personal services" includes the services of a broker serving as agent for the private foundation. Reg. 53.4941(d)-3(c)(1). N provides investment management and advisory services to the Charitable Lead Trust that are similar to the services provided by a broker. N is comparable to the investment counseling business owned by a disqualified person in Example (2) of Reg. 53.4941(d)-3(c)(2), which managed the investment portfolio of a private foundation. The personal services rendered to the Charitable Lead Trust directly by R and N and indirectly by P and R through N are reasonable and necessary for the Charitable Lead Trust to carry out its charitable purpose of distributing funds to tax-exempt organizations.

The Charitable Lead Trust, as a limited partner of N, pays N a fee for investment management and advisory services. In order to perform those services, N needs office space, which it subleases from R at cost. Both N and R are disqualified persons with respect to the Charitable Lead Trust. Pursuant to Code section 4941(d)(1)(A), self-dealing includes any direct or indirect leasing of property between a private foundation and a disqualified person. However, the sublease of office space by N from R is not an act of indirect self-dealing between the Charitable Lead Trust and R because N is not "controlled" by the Charitable Lead Trust within the meaning of Reg. 53.4941(d)-(b)(5).

Further, although disqualified persons with respect to the Charitable Lead Trust are also limited partners in N and N itself is a disqualified person, co-investments by the Charitable Lead Trust and such disqualified persons do not involve a transfer to, or use for the benefit of, a disqualified person of the income or assets of the Charitable Lead Trust under Code section 4941(d)(1)(E).

Code section 4943, regarding excess business holdings, applies only to such holdings in a "business enterprise" and the term "business enterprise" does not include a trade or business at least 95% of the gross income of which is derived from passive sources. A strict reading of section 53.4943-10(c)(1) of the regulations would limit the term "passive holding company" to organizations receiving at least 95% of their gross income exclusively from the passive sources listed in section 4943(d)(3).

The term "business enterprise" for purposes of section 4943, however, may not encompass certain partnerships that engage solely in investment activities, to include investments in limited partnerships. Furthermore, the charitable lead trust represents that neither N nor any other disqualified person with respect to the Trust is, or will be involved in managing any third-party investment partnership in which N currently has an investment or may invest in the future. Because limited partnership interests may represent passive investments (comparable to stock or securities), N, based on the specific facts represented in this case, will not be treated as a business enterprise under section 4943.

The policies underlying section 4943 support our conclusion. The legislative history of the Tax Reform Act of 1969, P.L. 172, made it clear that Congress only sought to prevent private foundations from engaging in active businesses. Specifically, the senate Finance Committee stated "that stock in a passive holding company is not to be considered a business holding, even if the

holding company is controlled by the foundation. Instead, the foundation is to be treated as owning its proportionate share of the underlying assets of the holding company. The committee also made it clear that passive investments generally are not to be considered business holdings." See S. Rep. No. 91-552, 91st Cong. 1st Sess., reprinted in 1969 U.S. Code Cong. Serv. 2027, 2068.

N will not engage directly in any sale of goods or performance of services, but will merely hold interests in other business enterprises. The purpose of N is not to maintain family control of a business. The operation of N may actually result in less business involvement or diversion of attention of foundation managers toward investment activities than would otherwise be the case. A contrary conclusion in this case would prevent the Charitable Lead Trust from indirectly investing in limited partnership interests through N, even though it could invest in such interests directly.

We emphasize that our ruling in this case applies solely to the facts as described and solely for purposes of section 4943 of the Code and not section 513 or other Code sections. The Charitable Lead Trust will pay unrelated business income tax on their unrelated business taxable income in accordance with section 512(c).

We have not considered whether the Charitable Lead Trust's proportionate share of any interests in a business enterprise held by N constitutes excess business holdings.

The Charitable Lead Trust's investment expenditures are made and its expenses incidental to its investment activities are incurred for the purpose of obtaining income to carry out the cartable purpose of the Charitable Lead Trust, i.e., to distribute funds to tax-exempt organizations. In addition, the Charitable Lead Trust's expenses incidental to its investment activities are exclusively on a cost recovery basis and are reasonable. Thus, the Charitable Lead Trust's investment expenditures and its expenses incidental to its investment activities do not constitute taxable expenditures under Code section 4945.

Accordingly, we rule as follows:

1. The Charitable Lead Trust's retention of an interest and investment in N, as described herein, are not direct or indirect acts of self-dealing, as defined in section 4941(d)(1) of the Code, from the date of commencement of the Charitable Lead Trust.

2. Payments by the Charitable Lead Trust to R for general accounting, tax and clerical services and to N (i) for investment management and advisory services, (ii) for the reimbursement of P for costs and expenses paid as the General Partner of N, and (iii) for the payment to R for general accounting, tax and clerical services do not constitute direct or indirect acts of self-dealing by the Charitable Lead Trust, as defined in Code section 4941(d)(1), or taxable expenditures, as defined in Code section 4945(d)(5).

3. The sublease of office space by N from R does not constitute an indirect act of self-dealing by the Charitable Lead Trust, as defined in section 4941(d)(1).

4. The Charitable Lead Trust's limited partnership interest in N does not constitute excess business holdings, as defined in Code section 4943(c).

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

Also, this ruling is directed only to the organization that requested it. Section 6110(j)(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,

(signed) Robert C. Harper, Jr.

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

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