

Internal Revenue Service

Department of the Treasury

Number: **200117016**
Release Date: 4/27/2001
Index Numbers: 0302.05-01
0305.04-00 4941.00-00

Washington, DC 20224

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Refer Reply To:

CC:CORP:B06-PLR-116687-00

Date:

January 24, 2001

LEGEND

X =
S1 =
S2 =
S3 =
S4 =
S5 =
S6 =
S7 =

Partnership =

A =
B =
C =
D =
E =
F =
G =
H =

C's CRUT =
E's CRUT =
G's CRUT =

Trust 1 =
Trust 2 =
Trust 3 =

Trust 4 =

Bank =

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a =
b =
c =
d =
e =
f =
g =

b% =
c% =
d% =
e% =
f% =
g% =
h% =
i% =
j% =
k% =
l% =
m% =
n% =
o% =
p% =

Date =

We respond to your letter dated August 23, 2000, in which you requested rulings under I.R.C. §§ 302(b)(3), 305 and 4941. The information submitted in that letter and later correspondence is summarized below.

X is a personal holding company. Its primary business is to manage its portfolio of marketable securities, which is its principal asset. Its secondary business is to manage its subsidiaries. X owns all of the stock of S1.

X has outstanding one class of stock, which is common stock. The total number of shares outstanding is a, owned as follows:

<u>SHAREHOLDER</u>	<u># SHARES</u>	<u>% SHARES</u>
A and B, as community property, through Trust 1	<u>b</u>	e%
S3	<u>c</u>	i%
C's CRUT	<u>d</u>	l%

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E's CRUT	<u>d</u>	l%
G's CRUT	<u>d</u>	l%
C, as C's separate property, through Trust 2	<u>e</u>	n%
E, as E's separate property, through Trust 3	<u>e</u>	n%
G and H, as their community property, through Trust 4	<u>f</u>	o%

A and B are married. Their children are C, E and G. C and D are married. E and F are married. G and H are married.

Each of Trust 1, Trust 2, Trust 3 and Trust 4 is a grantor trust within the meaning of I.R.C. § 676. Thus, each grantor of each of Trust 1, Trust 2, Trust 3 and Trust 4 is considered the owner (or joint owner) of the X stock held by that Trust. In other words, A and B, jointly, G and H, jointly, C, separately, and E, separately, each own the X stock owned by his/her/their grantor trust.

In addition, C, E and G each has a charitable remainder unitrust ("CRUT") established for his/her benefit. The taxpayer has represented that each CRUT qualifies under I.R.C. § 664(d)(3) and is a "combination of methods" CRUT within the meaning of Treas. Reg. § 1.664-3(a)(1)(i)(c).

The d shares owned by each of C's CRUT, E's CRUT and G's CRUT was acquired from A and B on Date.

S2 has conducted the business of making consumer loans. S2 is in the process of winding down. X owns b% of the stock of S2. The following people each own p%:

- A and B, as community property, through Trust 1
- C, as C's separate property, through Trust 2
- E, as E's separate property, through Trust 3
- G and H, as their community property, through Trust 4

S3 is an active insurance program administrator under contract with S4. S3 owns all of the stock of S4, which writes insurance. S4 owns all of the stock of S5, which also writes insurance. S3 is winding down the business operations of the subsidiaries and is seeking buyers for both subsidiaries.

The following people each own g% (g shares of common stock) of S3:

- A and B, as community property, through Trust 1

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C, as C's separate property, through Trust 2
 E, as E's separate property, through Trust 3
 G and H, as their community property, through Trust 4

E, as E's separate property, through Trust 3 owns f% of S6. The following people each own h% of S6:

A and B, as community property, through Trust 1
 C, as C's separate property, through Trust 2
 G and H, as their community property, through Trust 4

S6 owns d% of S7 and E owns j%, as his separate property, through Trust 3.

A and B, as community property, through Trust 1 own c% of Partnership and S3 owns k%. Partnership does not conduct an active trade or business but holds and manages a portfolio of publicly traded securities.

C, E, G and H are officers/directors of the following entities:

<u>PERSON</u>	<u>POSITION</u>
C	Director of X; officer of S1
E	Director and officer of X, S1, S2, S3, S4, S5, S6 and S7
G	Director of X, S2, S4, S6 and S7
H	Director of S2, S4, S6 and S7 Officer of S2, S4, S5, S6 and S7

The following people or entities have loaned money to X: S3, A, B, C, E, G and H.

X has loaned money to the following entities: S1, S2, S3 and S7.

The taxpayer has represented that all loans bear ordinary interest, are not subordinated to the claims of general creditors, are not convertible to common stock and payments on the loans are not dependent on the earnings of the borrower regarding either amount, certainty or interest.

Prior to the redemptions, the parties will undertake the following transactions:

- (1) S4 will distribute with respect to its stock all of the stock of S5 to S3.
- (2) A and B will purchase all of the stock of S2 now owned by C, E, G and H. As a result, X will own b% of S2, and A and B, as community property, through Trust 1, will own m%.

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- (3) C, E, G and H will terminate all of the director and officer positions they now hold. As a result, none of them will have any relationship as director, officer or employee of X, S1, S2, S3, S4, or S5.
- (4) The X and S3 stock will be appraised. X will engage a qualified appraiser (as defined in Treas. Reg. § 1.170A-13(c)(5)) to prepare a qualified appraisal (as defined in Treas. Reg. § 1.170A-13(c)(3)). The purpose of the qualified appraisal will be to establish the fair market value ("Redemption Price") of each share of X stock as of the "Purchase Date," which will be the date on which the redemption offer expires. Because the redemption offer will be offered to all shareholders of X stock, the qualified appraisal will determine the proportionate net asset value per share of X based on its underlying assets and liabilities. The qualified appraiser will not reap any economic benefit from its valuation of the X stock other than its customary fee for services.
- (5) Because a substantial majority of the assets of X are publicly traded securities, the qualified appraisal will be made as of the Purchase Date. However, X will provide to each shareholder, as part of the redemption offer package, a good faith estimate of the fair market value per share at the time of the offer. Following the Purchase Date, the qualified appraisal will be completed and the Redemption Price will be determined. The Redemption Price will be paid on the "Payment Date," which will be within two weeks of the Purchase Date.
- (6) Bank, as the trustee of each CRUT, will review the methodology to be used in the qualified appraisal. The qualified appraiser will be required to make any adjustment that Bank determines to be necessary or appropriate to assure that the Redemption Price is equal to fair market value. The taxpayers anticipate the methodology will be established by the qualified appraiser and reviewed by Bank before the Purchase Date, and that the qualified appraisal will be completed shortly after the Purchase Date when the market quotations for the Purchase Date for publicly traded securities held by X are available.

The taxpayer has requested rulings on the following steps:

- 1) X will adopt a plan of redemption (the "Actual Redemption") which will apply to all of its outstanding stock. X will submit to all of its shareholders an offer to redeem some or all of each shareholder's X stock. Each shareholder may tender some or all of the shareholder's X stock for redemption, without regard to whether any other shareholder tenders stock for redemption. All tendered stock will be redeemed.
- 2) The Redemption Price for each share of X stock will be the fair market value of the share, which will be established by the appraisal. The taxpayers represent that the Redemption Price will constitute fair market value and that each and every shareholder who tenders X stock for redemption will receive in return the fair market value of the tendered stock.

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- 3) No shareholder is under any obligation to tender any of that shareholder's X stock, nor is any shareholder under any obligation to retain any of that shareholder's X stock. The taxpayers anticipate that each CRUT will tender all of its shares of X stock for redemption. The shareholders also anticipate that C, E, G and H will tender all of their shares of X stock for redemption. The taxpayers anticipate that A and B may tender some of their shares but likely will not tender all of their shares of X stock.
- 4) X will pay the Redemption Price for all tendered shares in cash within two weeks following the Purchase Date. X will generate the cash required for the proposed Actual Redemption by selling part of its portfolio of marketable securities on established markets. The Redemption Price will not bear interest from the Purchase Date to the Payment Date. The delay in payment of the purchase price is for the purpose of allowing the appraisal to be made as of the Purchase Date.
- 5) X will also agree to purchase from C, E, G and H all of their S3 shares (the "Deemed Redemption"), which purchase will constitute the Deemed Redemption of S3 shares. The purchase price for each share of S3 stock will be the fair market value of the share, which will be established by the appraisal. The taxpayers represent that the purchase price so established will constitute fair market value, and that each shareholder who sells S3 stock to X will receive in return the fair market value of such stock.
- 6) Neither C, E, G, nor H is now under any obligation to sell any of that shareholder's S3 stock to X, nor is any such shareholder under any obligation to retain any of that shareholder's S3 stock. The taxpayers anticipate that C, E, G, and H will sell all of their shares of S3 stock to X in the Deemed Redemption. X will not purchase, and A and B will not sell, any of their shares of S3 stock in the Deemed Redemption. There are now no other plans, arrangement, or other expectations regarding any future transactions in S3 stock.
- 7) X will pay the purchase price for all S3 shares in cash within two weeks following the Purchase Date. X will generate the cash required for the proposed purchase of S3 stock in the Deemed Redemption by selling part of its portfolio of marketable securities on established markets. S3 itself will not distribute any cash or other property in the Deemed Redemption. The purchase price will not bear interest from the Purchase Date to the Payment Date. The delay in payment of the purchase price is for the purpose of allowing the appraisal to be made as of the Purchase Date.

The taxpayer has made the following representations with respect to the Actual Redemption:

- (a) There are no outstanding options or warrants to purchase or otherwise acquire X stock nor are there any outstanding debentures or other obligations that are

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convertible into X stock or would be considered X stock.

- (b) No notes or other obligations of X will be distributed to a redeemed shareholder in the Actual Redemption.
- (c) No shareholder of X has been or will be obligated to purchase any of the stock of any shareholder of X which will or may be redeemed pursuant to the proposed Actual Redemption.
- (d) The proposed Actual Redemption and all of the preparatory transactions described in this ruling request constitute an isolated transaction and are not related to any other past or future transaction. However, the taxpayers intend that the Actual Redemption and the Deemed Redemption will occur simultaneously in order to obtain sale or exchange treatment for the selling shareholders of S3 stock in the Deemed Redemption and the redeeming shareholders of X stock in the Actual Redemption.
- (e) There have been no redemptions, issuances, or exchanges by X of its stock in the past five years.
- (f) X has no plan or intention to issue, redeem, or exchange any shares of its stock, except for the proposed Actual Redemption. In particular, X has no plan or intention to redeem any of the stock owned by A and B, except for the possible redemption of X shares which they may tender for redemption pursuant to the proposed Actual Redemption.
- (g) None of the X stock to be redeemed from C, E or G was acquired by any of them within the ten (10) year period preceding the proposed Actual Redemption from a person whose stock would be attributed under I.R.C. § 318(a) to C, E or G at the time of the Actual Redemption. No person whose stock would be attributed to C, E or G under I.R.C. § 318(a) will own stock of X after the Actual Redemption if the stock was acquired by that person from the redeemed shareholder within 10 years preceding the proposed redemption. The acquisition or disposition of X stock by H did not have as one of its principal purposes the avoidance of federal income taxes.
- (h) After the proposed Actual Redemption, none of C, E, G and H, nor each CRUT, will have any interest in X, including an interest as officer, director, or employee (other than an interest as a creditor as described in Treas. Reg. § 1.302-4(d) and constructive ownership under I.R.C. § 318(a)(1)).
- (i) C, E, G and H will execute and file the agreement required by I.R.C. § 302(c)(2)(A)(iii) with respect to the acquisition of any interest in X within 10 years from the date of the Purchase Date.
- (j) None of the X stock to be redeemed is "Section 306 stock" within the meaning of I.R.C. § 306(c).

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- (k) There are no declared but unpaid dividends, or funds set apart for dividends, on any of the X stock owned by any shareholder of X stock.
- (l) At the time of the exchange (the proposed Actual Redemption, which will occur on the Purchase Date), the fair market value of the consideration to be received by the Redeemed Shareholders of X will be approximately equal to the fair market value of the X stock to be exchanged therefor.
- (m) The price to be paid for the X stock to be redeemed will not result in a loss with respect to the shares of any X stock tendered for redemption in the proposed Actual Redemption.

The taxpayer has made the following representations with respect to the Deemed Redemption:

- (a) There are no outstanding options or warrants to purchase or otherwise acquire S3 stock nor are there any outstanding debentures or other obligations that are convertible into S3 stock or would be considered S3 stock.
- (b) No notes or other obligations of S3 or X will be distributed to a shareholder of S3 whose stock will be purchased by X in the Deemed Redemption.
- (c) No shareholder of S3 has been or will be obligated to purchase any of the stock of any shareholder of S3 which will be purchased by X pursuant to the Deemed Redemption.
- (d) The proposed purchase of S3 stock by X and all of the preparatory transactions described in this ruling request constitute an isolated transaction in S3 stock and is not related to any other past or future transaction. However, the taxpayers intend that the Actual Redemption and the Deemed Redemption will occur simultaneously in order to obtain sale or exchange treatment for the selling shareholders of S3 stock in the Deemed Redemption and the redeeming shareholders of X stock in the Actual Redemption.
- (e) There have been no redemptions, issuances, or exchanges by S3 of its stock in the past five years.
- (f) S3 has no plan or intention to issue, redeem, or exchange any shares of its stock. (The proposed Deemed Redemption of S3 stock is a purchase of S3 stock by X and not an actual redemption or other transaction between S3 and its shareholders.) In particular, S3 has no plan or intention to redeem any of the stock owned by A and B.
- (g) None of the S3 stock to be purchased by X from C, E or G in the Deemed Redemption was acquired by any of them within the ten (10) year period preceding the proposed Deemed Redemption from a person whose stock would be attributed under I.R.C. § 318(a) to C, E or G at the time of the Deemed Redemption. No

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person whose stock would be attributed to C, E or G under I.R.C. § 318(a) will own stock of S3 after the Deemed Redemption if the stock was acquired by that person from the redeemed shareholder within 10 years preceding the proposed Deemed Redemption. The acquisition or disposition of S3 stock by H did not have as one of its principal purposes the avoidance of federal income taxes.

- (h) After the proposed Deemed Redemption, none of C, E, G or H will have any interest in S3, including an interest as officer, director, or employee (other than constructive ownership under I.R.C. § 318(a)(1)).
- (i) C, E, G and H will execute and file the agreement required by I.R.C. § 302(c)(2)(A)(iii) with respect to the acquisition of any interest in S3 within 10 years from the date of the Purchase Date.
- (j) None of the S3 stock is "Section 306 stock" within the meaning of I.R.C. § 306(c).
- (k) There are no declared but unpaid dividends, or funds set apart for dividends, on any of the S3 stock owned by any shareholder of S3 stock.
- (l) At the time of the exchange (the proposed Deemed Redemption, which will occur on the Purchase Date), the fair market value of the consideration to be received by the shareholders selling S3 stock to X will be approximately equal to the fair market value of the S3 stock to be exchanged therefor.
- (m) The price to be paid for the S3 stock to be purchased by X in the Deemed Redemption will not result in a loss with respect to the shares of any such stock sold to X in the Deemed Redemption.

Based on the information submitted and on the representations set forth above, we rule as follows:

The Actual Redemption:

- (1) If: (a) C tenders all of her shares of X stock, (b) C's CRUT tenders all of its shares of X stock, (c) all such shares are redeemed by X, (d) C sells all of her shares of S3 stock to X, and (e) C executes and files the agreement described in I.R.C. § 302(c)(2)(A)(iii) in accordance with Treas. Reg. § 1.302-4(a), the redemption by X of all the shares of its stock held by C will constitute a complete termination of C's interest in X within the meaning of I.R.C. § 302(b)(3). The redemption will be treated as a distribution in full payment in exchange for the X stock to be redeemed, as provided in I.R.C. § 302(a). Pursuant to I.R.C. § 302(c)(2), I.R.C. § 318(a)(1) will not apply to this redemption.
- (2) If: (a) E tenders all of his shares of X stock, (b) E's CRUT tenders all of its shares of X stock, (c) all such shares are redeemed by X, (d) E sells all of his shares of S3 stock to X, and (e) E executes and files the agreement described in I.R.C.

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§ 302(c)(2)(A)(iii) in accordance with Treas. Reg. § 1.302-4(a), the redemption by X of all the shares of its stock held by E will constitute a complete termination of E's interest in X within the meaning of I.R.C. § 302(b)(3). The redemption will be treated as a distribution in full payment in exchange for the X stock to be redeemed, as provided in I.R.C. § 302(a). Pursuant to I.R.C. § 302(c)(2), I.R.C. § 318(a)(1) will not apply to this redemption.

- (3) If: (a) G and H tender all of their shares of X stock, (b) G's CRUT tenders all of its shares of X stock, (c) all such shares are redeemed by X, (d) G and H sell all of their shares of S3 stock to X, and (e) G and H jointly execute and file the agreement described in I.R.C. § 302(c)(2)(A)(iii) in accordance with Treas. Reg. § 1.302-4(a), the redemption by X of all the shares of its stock held by them will constitute a complete termination of their interest in X within the meaning of I.R.C. § 302(b)(3). The redemption will be treated as a distribution in full payment in exchange for the X stock to be redeemed, as provided in I.R.C. § 302(a). Pursuant to I.R.C. § 302(c)(2), I.R.C. § 318(a)(1) will not apply to this redemption.
- (4) As provided in I.R.C. § 1001, gain will be realized and recognized by a redeeming shareholder measured by the difference between the redemption price of the X stock and the adjusted basis of X stock surrendered (as determined under I.R.C. § 1011). Provided I.R.C. § 341 (relating to collapsible corporations) is not applicable and X stock is a capital asset in the hands of a redeeming shareholder, the gain, if any, will constitute capital gain subject to the provisions and limitations of Subchapter P of Chapter 1. Pursuant to the provisions of I.R.C. § 267, no loss deduction will be allowable.
- (5) Neither A nor B will receive a constructive dividend upon the redemption of X stock. (Rev. Rul. 58-614, 1958-2 C.B. 920).
- (6) If D serves as a director, officer or employee of X, S1, or S2 following the Actual Redemption, D's service in any such capacity will not violate the agreement which C will execute and which is required by I.R.C. § 302(c)(2)(A)(iii).
- (7) If F serves as a director, officer or employee of X, S1, or S2 following the Actual Redemption, F's service in any such capacity will not violate the agreement which E will execute and which is required by I.R.C. § 302(c)(2)(A)(iii).
- (8) The Actual Redemption of X stock will constitute a single and isolated transaction which is not part of a periodic redemption plan. The Actual Redemption and the Deemed Redemption are intended to occur as part of one plan. The Actual Redemption will not result in an I.R.C. § 305 deemed distribution to any of the X shareholders, regardless of whether or not the shareholder has a portion of the shareholder's stock redeemed in the Actual Redemption (see Example 10 of Treas. Reg. § 1.305-3(e)). The above ruling addresses only the application of I.R.C. § 305 to the X shareholders who do not participate in the Actual Redemption (or who participate only partially).

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The Deemed Redemption:

- (9) The proposed acquisition for cash by X of all of the S3 stock owned by C, E, G and H will constitute an acquisition of stock by a related corporation within the meaning of I.R.C. § 304(a)(1).
- (10) If: (a) C tenders all of her shares of X stock, (b) C's CRUT tenders all of its shares of X stock, (c) all such shares are redeemed by X, (d) C sells all of her shares of S3 stock to X, and (e) C executes and files the agreement described in I.R.C. § 302(c)(2)(A)(iii) in accordance with Treas. Reg. § 1.302-4(a), the purchase by X of all the shares of S3 stock held by C will constitute a complete termination of C's interest in S3 within the meaning of I.R.C. § 302(b)(3) (I.R.C. §§ 304(b)(1) and 302(c)(2)(A)). The Deemed Redemption will be treated as a distribution in full payment in exchange for X stock, as provided in I.R.C. §§ 304(a)(1) and 302(a). Subject to the conditions of I.R.C. § 302(c)(2)(A)(i), (ii) and (iii), I.R.C. § 318(a)(1) will not apply to this redemption.
- (11) If: (a) E tenders all of his shares of X stock, (b) E's CRUT tenders all of its shares of X stock, (c) all such shares are redeemed by X, (d) E sells all of his shares of S3 stock to X, and (e) E executes and files the agreement described in I.R.C. § 302(c)(2)(A)(iii) in accordance with Treas. Reg. § 1.302-4(a), the purchase by X of all the shares of S3 stock held by E will constitute a complete termination of E's interest in S3 within the meaning of I.R.C. § 302(b)(3) (I.R.C. §§ 304(b)(1) and 302(c)(2)(A)). The Deemed Redemption will be treated as a distribution in full payment in exchange for X stock, as provided in I.R.C. §§ 304(a)(1) and 302(a). Subject to the conditions of I.R.C. § 302(c)(2)(A)(i), (ii) and (iii), I.R.C. § 318(a)(1) will not apply to this deemed redemption.
- (12) If: (a) G and H tender all of their shares of X stock, (b) G's CRUT tenders all of its shares of X stock, (c) all such shares are redeemed by X, (d) G and H sell all of their shares of S3 stock to X, and (e) G and H jointly execute and file the agreement described in I.R.C. § 302(c)(2)(A)(iii) in accordance with Treas. Reg. § 1.302-4(a), the purchase by X of all the shares of S3 stock held by them will constitute a complete termination of their interest in S3 within the meaning of I.R.C. § 302(b)(3) (I.R.C. §§ 304(b)(1) and 302(c)(2)(A)). The Deemed Redemption will be treated as a distribution in full payment in exchange for X stock, as provided in I.R.C. §§ 304(a)(1) and 302(a). Subject to the conditions of I.R.C. § 302(c)(2)(A)(i), (ii) and (iii), I.R.C. § 318(a)(1) will not apply to this deemed redemption.
- (13) As provided in I.R.C. § 1001, gain will be realized and recognized by a redeeming shareholder measured by the difference between the redemption price for the S3 stock and the adjusted basis of X stock deemed to be surrendered (as determined under I.R.C. § 1011). Provided I.R.C. § 341 (relating to collapsible corporations) is not applicable and the stock is a capital asset in the hands of a redeeming shareholder, the gain, if any, will constitute capital gain subject to the provisions and limitations of Subchapter P of Chapter 1. Pursuant to the provisions of I.R.C.

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§ 267(a), even if a loss is realized, no loss deduction will be allowable.

We express no opinion about the tax treatment of either the Actual Redemption or Deemed Redemption under any other provisions of the Code or regulations, or about the tax treatment of any condition existing at the time of, or effects resulting from, either the Actual Redemption or the Deemed Redemption that are not specifically covered by the above rulings.

Section 4941

Under I.R.C. § 4947(a)(2), a trust which is not exempt from tax under I.R.C. § 501(a), not all of the unexpired interests in which are devoted to one or more purposes described in I.R.C. § 170(c)(2)(B) and which has amounts in trust for which a deduction was allowed under I.R.C. § 170 or 2522, is subject to the excise taxes on self-dealing imposed by I.R.C. § 4941.

Under I.R.C. § 4946(a)(1)(A) a substantial contributor to a private foundation is a disqualified person.

Under I.R.C. § 4946(a)(1)(D), all of the members of the family of a disqualified person are disqualified persons with respect to the private foundation. Pursuant to I.R.C. § 4941(d), a disqualified person's family includes his spouse, children, and the spouses of his children.

Under I.R.C. § 4946(a)(1)(E), a corporation of which disqualified persons own more than thirty-five percent (35%) of the total combined voting power is itself a disqualified person with respect to the private foundation.

Section 4941(d)(1)(A) of the Code defines self-dealing to include any direct or indirect sale or exchange of property between a private foundation and a disqualified person. Section 4941(d)(2)(F) provides that a transaction between a private foundation and a corporation which is a disqualified person pursuant to a redemption or other corporate adjustment shall not be an act of self-dealing if all of the securities of the same class as that held by the foundation are subject to the same terms and such terms provide that the foundation will receive no less than fair market value.

Section 53.4941(d)-3(d)(1) of the Foundation and Similar Excise Taxes Regulations provides that all of the securities are not subject to the same terms unless the corporation makes a bona fide offer on a uniform basis to the foundation and every other person who holds such securities.

Treas. Reg. § 53.4941(e)-1(b)(2)(iii) provides that in cases in which a transaction would not have been an act of self-dealing had the private foundation received fair market value, the amount involved is the excess of the fair market value of the property transferred by the private foundation over the amount which the private foundation receives, but only if the parties have made a good faith effort to determine fair market

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value. For purpose of this subdivision of the regulation, a good faith effort shall ordinarily have been made where (a) the person making the valuation is not a disqualified person with respect to the private foundation and is both competent to make the valuations and not in a position, whether by stock ownership or otherwise, to derive an economic benefit from the value utilized; and (b) the method utilized in making the valuation is a generally accepted method for valuing comparable property, stock, or securities for purposes of arm's-length business transactions where valuation is a significant factor.

Pursuant to I.R.C. § 4947(a)(2), each CRUT is subject to the excise taxes on self-dealing imposed by I.R.C. § 4941.

Pursuant to I.R.C. § 4946(a)(1)(A), both A and B, as the persons who created and funded each CRUT are substantial contributors and, therefore, are disqualified persons with respect to each CRUT.

Pursuant to I.R.C. § 4946(a)(1)(D), all of the members of A and B's family are disqualified persons with respect to each CRUT. C, D, E, F, G, and H are members of the family of A and B within the meaning of I.R.C. § 4946(d). Accordingly, C, D, E, F, G, and H are disqualified persons with respect to each CRUT.

A and B, through Trust 1, own as their community property more than thirty-five percent (35%) of the total combined voting power of X. Therefore, pursuant to I.R.C. § 4946(a)(1)(E), X is a disqualified person with respect to each CRUT.

The proposed plan of redemption of the stock of X would be a direct or indirect sale or exchange of property between each CRUT and X and, therefore, an act of self-dealing under I.R.C. § 4941(d)(1)(A), if the proposed plan of redemption did not qualify for an exception to the general rule. Since the proposed plan of redemption will be a bona fide offer made with respect to all of the stock of X, since X has only one class of stock outstanding, since the plan of redemption will be offered to all shareholders of X with respect to all of the stock of X, and since the plan of redemption will apply the same terms to all of the X stock owned by all shareholders, pursuant to I.R.C. § 4941(d)(2)(F), the redemption of X shares from each CRUT will not be an act of self-dealing if each CRUT receives no less than fair market value.

X will cause the value of a share of X stock to be determined by a qualified appraiser, who will issue a qualified appraisal. Bank, as trustee of each CRUT, will have the opportunity to review the appraisal methodology, to require any necessary or appropriate changes, and to approve the methodology. No CRUT will be required to tender any of its shares for redemption, and the trustee will have the fiduciary obligation not to do so if the trustee determines that the amount received in the redemption would be less than fair market value. The Redemption Price to be paid to each CRUT will be exactly the same price to be paid to any other shareholder who tenders shares for redemption. Accordingly, each CRUT will receive no less than fair market value for any X share which they tender for redemption.

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X and Bank, as well as all of the taxpayers requesting rulings with respect to self-dealing, will have done all that is reasonably possible to assure that the Redemption Price will be no less than fair market value. X will engage a qualified appraiser, as defined in Treas. Reg. § 1.170A-13(c)(5), to make a qualified appraisal as defined in Treas. Reg. § 1.170A-13(c)(3). The qualified appraiser will not be a disqualified person with respect to each CRUT, will be competent to make the valuation, and will not be in a position, whether by stock ownership or otherwise, to derive an economic benefit from the value utilized. The qualified appraiser is not now a shareholder of X and will never become one as a result of the plan of redemption or any other transaction. The qualified appraiser will be paid a customary fee for the qualified appraisal, which fee will be a fixed amount and will not be affected by the valuation amount. Accordingly, both Bank, as the trustee of each CRUT, and X will have made a good faith effort to determine the fair market value of the X stock. Therefore, if it later is determined that each CRUT received less than fair market value for any X stock they tender for redemption, the amount involved should be determined under Treas. Reg. § 53.4941(e)-1(b)(2)(iii) to be the excess of fair market value, as finally determined, over the Redemption Price paid to each CRUT.

Accordingly, we conclude:

- (1) The distribution of cash by X in redemption of the shares of stock, if any, tendered by a CRUT in response to the proposed Actual Redemption by X will not be an act of direct or indirect self-dealing pursuant to the provisions of I.R.C. § 4941(d)(2)(F) and Treas. Reg. § 53.4941(d)-3(d)(1), and will not give rise to tax under I.R.C. § 4941.
- (2) Neither A, B, C, E, G, H, Bank (as trustee of each CRUT), nor any other person who is a "disqualified person" or "foundation manager," as such terms are defined in I.R.C. § 4941(a) and (b), with respect to a CRUT will have engaged in an act of self-dealing and will not by virtue of the Actual Redemption be subject to the private foundation excise taxes imposed by I.R.C. § 4941.
- (3) The Redemption Price, if determined in accordance with the proposed Actual Redemption, will constitute a "good faith effort to determine fair market value" within the meaning of Treas. Reg. § 53.4941(e)-1(b)(2)(iii).
- (4) If the Redemption Price received by any CRUT is later determined to be less than the fair market value of the X shares redeemed, the "amount involved," for the purpose of the taxes imposed by I.R.C. § 4941(a) and (b) will be the excess of the fair market value of the shares redeemed over the Redemption Price received in the exchange.
- (5) The Actual Redemption of X shares by some shareholders will not constitute a direct or indirect transfer, for purposes of I.R.C. § 4941(d)(2)(F), of their respective assets or income to any shareholder of X who does not accept the Actual Redemption offer, because the same terms and conditions regarding the redemption of shares

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apply to all shareholders.

We express no opinion about the tax treatment of any other transaction described herein under any provisions of the Code or regulations.

This ruling is directed only to the taxpayers requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,
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