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Department of the Treasury

Washington, DC 20224

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Date:
July 9, 2002

LEGEND:

Taxpayer =
Corporation =
State =
Foundation =
University =
Research Institute =
Funding Agreement =

Date 1 =
Date 2 =
$x =
Date 3 =
Date 4 =
Date 5 =
Location L =
$y =

Dear :

This responds to your letter, dated December 22, 2000, and other supplemental material, in which you ask for rulings on behalf of Taxpayer concerning the estate, gift, income and excise tax consequences of Taxpayer's proposed contributions to University for the Research Institute.

RULINGS REQUESTED

Taxpayer requests the following rulings:

1. Taxpayer's agreement under Section 1.1 of the Funding Agreement, to provide annual funding to University for the Research Institute, does not constitute a completed gift for federal gift tax purposes until Taxpayer becomes obligated, in a given year, to provide such funding in an ascertainable amount pursuant to a Board-approved budget for such year. When any such gift is complete, the value of such gift qualifies for the federal gift tax charitable deduction under § 2522 of the Internal Revenue Code, provided University is described in § 2522(a) of the Code at that time. Any subsequent payment made by Taxpayer in satisfaction of such obligation is not a transfer for federal gift tax purposes.

2. Taxpayer's agreement to pay the endowment amount under Section 1.6 of the Funding Agreement will constitute a completed gift for federal gift tax purposes on the earlier of: (i) Actual payment of the endowment amount to University pursuant to Section 1.6; and (ii) the date on which University's obligations under Section 2.1 for all fiscal years through Date 4, have been ascertained and paid in accordance with such section. At such time, the gift will be deductible for federal gift tax purposes under § 2522. Any subsequent payment by Taxpayer in satisfaction of the promise will not be a transfer for federal gift tax purposes.

3. Taxpayer's agreement under Section 1.7 of the Funding Agreement to provide in his will that, if Taxpayer dies prior to the date on which University's obligations under Section 2.1 for all fiscal years through Date 4, have been ascertained and paid in full in accordance with such section, his estate will pay a specified sum to Foundation (or University), will not constitute a completed gift for federal gift tax purposes.

4. Assuming University is described in § 2055 at the time of Taxpayer's death, then amounts paid by Taxpayer's estate under Section 1.7 of the Funding Agreement, representing amounts Taxpayer becomes obligated to pay during his lifetime, that are unpaid at his death, will be deductible under § 2053 and § 20.2053-5 of the Estate Tax Regulations to the extent determinable on the date of death and enforceable against the estate.

Amounts passing to Foundation or to other organizations described in § 2055 pursuant to the residuary bequest in Taxpayer's will, as proposed, will qualify for an estate tax charitable deduction under § 2055.

5. Taxpayer's deposit of securities pursuant to the Pledge Agreement, to secure Taxpayer's obligations under the Funding Agreement, is not a transfer of property for federal gift tax purposes.

6. The assets held by University for the Research Institute will not be includible under § 2036 or § 2038 in Taxpayer's gross estate for federal estate tax purposes at his death.

7. Each contribution of cash and/or shares of Corporation stock or other property by Taxpayer to University for the Research Institute pursuant to the Funding Agreement will qualify for the federal income tax charitable contribution deduction in the year of such payment or transfer, in the full amount of such cash or the full fair market value of such stock or other property, to the extent provided in § 170. For purposes of this ruling, a transfer of securities to University for the Research Institute upon an uncured material default under the Pledge Agreement will be treated as a transfer of such securities by Taxpayer to University for the Research Institute under the Funding Agreement, in satisfaction of the defaulted contribution obligation.

8. In the event that Corporation purchases any shares of its common stock from University, such purchase will be treated as a redemption of such shares from University, and will not be treated as a redemption of shares of Corporation common stock from Taxpayer or as a distribution from Corporation to Taxpayer; University's sale or exchange of any other appreciated property that it receives from Taxpayer under the Funding Agreement will not result in income, gain or loss to Taxpayer.

9. Taxpayer will not realize gain or loss for federal income tax purposes upon his satisfaction of his contribution commitment as set forth in the Funding Agreement by delivering shares of Corporation common stock or marketable securities to University, or upon a sale or other disposition of securities by University under the Pledge Agreement. For purposes of this ruling, a transfer of securities to University upon an uncured material default under the Pledge Agreement will be treated as a transfer of such securities by Taxpayer to University under the Funding Agreement, in satisfaction of the defaulted contribution obligation.

10. In the event that a Current Employee Stock Ownership Plan (ESOP) Appraisal is available with respect to any contribution of Corporation shares, such Current ESOP Appraisal will constitute a qualified appraisal under § 1.170A-13 of the Income Tax Regulations.

11. Neither Foundation's contributions of Annual Funding Commitments during the Foundation Funding Period pursuant to Section 1.1 of the Funding Agreement, nor Foundation's contribution of the Endowment Amount pursuant to Section 1.6 of the Funding Agreement, will constitute an act of self-dealing between Foundation and Taxpayer or his estate. In addition, Foundation's entering into the Funding Agreement will not constitute an act of self-dealing between Foundation and Taxpayer or his estate. This ruling does not apply to any contribution made by Foundation that Foundation is not obligated to make under the Funding Agreement.

FACTS

Taxpayer is the Chairman of the Board and the controlling shareholder of Corporation, a privately-held corporation incorporated under the laws of State. Foundation, a non-profit corporation incorporated under the laws of State, is an organization described in § 501(c)(3) and a private foundation described in § 509. University is a non-profit corporation that is exempt from federal income tax under § 501(a) as an organization described in § 501(c)(3). The Research Institute is organized and recognized as a separate supporting organization of University that satisfies the requirements set forth in §§ 501(c)(3) & 509(a)(3). Taxpayer represents that at all material times University and the Research Institute will satisfy all of the requirements of § 170(c)(2), and that the Research Institute will retain its status as an organization described in §§ 501(c)(3) and 509(a)(3).

Taxpayer and Foundation have entered into an arrangement with University for the establishment and funding of the Research Institute. Pursuant to Section 1.1 of the Funding Agreement, Taxpayer's Annual Funding Commitment for the Research Institute is as follows:

> Annual Funding Commitment. [Taxpayer] will provide funding to [University] for [the Research Institute] (the "Annual Funding Commitment") for each fiscal year beginning with the fiscal year commencing [Date 1], and ending (subject to the provisions of section 1.6 hereof) with the fiscal year of the death of [Taxpayer], or in the event of this death after the commencement of a fiscal year and before the budget for such fiscal year is approved by the Board of [the Research Institute] (the "Board"), the preceding fiscal year (such period being referred to as the "Donor Funding period"); and for each fiscal year thereafter (such period being referred to as the "Foundation Funding Period"), the Foundation will provide such Annual Funding Commitment. The Annual Funding Commitment shall be in the amount of the lesser of (a) the budget for such year as approved by the Board no later than August 31 of such fiscal year, which budget will include an appropriate provision for expenditures described in Section 1.4 of this Agreement and (b) the Maximum Annual Funding Commitment which is, for the fiscal year commencing [Date 1] and ending [Date 2], the sum of and, for fiscal each year thereafter, the sum of adjusted by the percentage change in the Higher Education Price Index ("HEPI") between the HEPI for the month of June 2000 and the HEPI for the month of June immediately preceding the relevant fiscal year. In the event that the HEPI is no longer available as an index, the parties will agree upon a mutually acceptable substitute index; otherwise an index based on the Consumer Price Index plus 1.5% will be used. The Annual Funding Commitment shall be adjusted for any excesses or deficiencies of the prior year's Annual Funding Commitment pursuant to Section 1.2(c) and 1.2(d). To

> the extent that the Maximum Annual Funding Commitment in a particular fiscal year is greater than the budget for such year determined as aforesaid, the difference shall cumulate and be provided by [Taxpayer] as necessary to fund future non-recurring costs of [the Research Institute] in accordance with Board-approved budgets. The Annual Funding Commitment may be paid in a single installment by September 30 of each fiscal year (provided, however, that the Annual Funding Commitment for the fiscal year beginning [Date 1], may be paid in a single installment at any time before [Date 5]) or, at the option of [Taxpayer], in quarterly or semi-annual installments.

Section 1.2(a) of the Funding Agreement provides that the annual and endowment contributions may be comprised of cash, marketable securities, shares of Corporation common stock, or any combination of the foregoing, to be determined annually by Taxpayer, in Taxpayer's sole discretion. The Funding Agreement further provides:

> [I]n the case of an Annual Funding Commitment discharged by the delivery of shares of [Corporation] common stock, on the date (the "Contribution Date") with respect to which such a written appraisal is required pursuant to the Employee Retirement Income Security Act of 1974, as amended, to be prepared, a copy of such appraisal ("the Current [Employee Stock Option Plan (ESOP)] Appraisal") shall be delivered to [University] and [the Research Institute], ... delivered together with the certificate or certificates representing such shares, as soon as available, but in no event later than four months following the Contribution Date.

Section 1.2(b) of the Funding Agreement provides:

> <u>[University] Put Right</u>. In the event and to the extent that [Taxpayer] satisfies the Annual Funding Commitment in whole or in part with shares of [Corporation] common stock, [University] may, in its sole discretion, at any time after 60 days following the date on which the Current ESOP Appraisal is delivered to [University] (the "Current ESOP Appraisal Delivery Date"), but in no event later than the last day of the fiscal year with respect to which such Annual Funding Commitment was paid, tender to [Taxpayer] that number of such shares having a maximum aggregate fair market value (the "Current Appraised Share Value"), as set forth in the Current ESOP Appraisal, equal to the Annual Funding Commitment in satisfaction of which such shares were contributed. If so tendered, [Taxpayer] shall promptly purchase such shares from University in a single cash payment in an amount equal to the Current Appraised Share Value. Notwithstanding the foregoing, however, [Taxpayer] shall be under no obligation to purchase such shares unless University shall have tendered such shares to [Corporation] for redemption within 30 days after

> the Current ESOP Appraisal Delivery Date, and [Corporation] shall not have redeemed such shares in full by the date that is 60 days after the Current ESOP Appraisal Delivery Date, at the Current Appraised Share Value.

Taxpayer represents that, in the event that Taxpayer makes a contribution of Corporation shares on the same date as a valuation is required to be made for the ESOP, Taxpayer will use a Current ESOP Appraisal as a qualified appraisal within the meaning of § 1.170A-13 of the Regulations, unless the Current ESOP Appraisal is not available by the date specified in § 1.170A-13(c)(3)(iv)(B) of the Regulations. In providing substantiation for tax purposes of a contribution of Corporation stock, Taxpayer represents that any Current ESOP Appraisal will include all of the information required under § 1.170A-13(c) of the Regulations, and that the appraiser will prepare an appraisal summary, as required by the Regulations, including the required declarations.

Section 1.2(e) of the Funding Agreement provides:

> In the event that a Current ESOP Appraisal for a contribution of shares has not been delivered by the Current ESOP Appraisal Delivery Date, [Taxpayer] and [University] shall jointly select a "qualified appraiser," as defined in the regulations promulgated under section 170(a)(1) of the Internal Revenue Code of 1986, as amended, to appraise the value of such shares. Such qualified appraiser shall prepare an appraisal meeting the standards prescribed by such regulations, stating the value of such shares as of Contribution Date (the "Non-ESOP Appraised Value"), by the date that is six months after the Contribution Date, but in no event later than the date prescribed by such regulations.

Taxpayer represents that he will receive the appraisal by the date specified in § 1.170A-13(c)(3)(iv)(B) of the Regulations. Taxpayer also represents that he will supplement any Current ESOP Appraisal or other qualified appraisal with a copy of the Funding Agreement.

Taxpayer's funding commitment is to be secured by a non-recourse pledge of securities. Section 1.5 of the Funding Agreement provides:

> <u>Security</u>. [Taxpayer's] Funding Commitment shall be secured by a non-recourse pledge of securities with a fair market value equal to at least [$y] to be held by [University] as Pledgee under a Pledge Agreement of even date between [Taxpayer] and [University] . . . . [University] acknowledges that, except as provided in the Pledge Agreement, it is acquiring no interest in, or any right or claim with respect to, any assets owned by [Taxpayer] at any time during the term of this Agreement, and that, except as aforesaid, [University] is solely a general creditor of [Taxpayer] with respect to [University]'s rights under this Agreement.

Section 6 of the Pledge Agreement provides that, in the event of a material default by Taxpayer of Taxpayer's obligations under the Funding Agreement, and the failure of Taxpayer to cure such default within 30 days after notice thereof, University shall have the right to transfer to itself the number of pledged shares substantially equal in value to the amount of the defaulted obligation.

Section 1.6 of the Funding Agreement provides that, in addition to the annual contributions, Taxpayer will contribute to University a lump-sum endowment amount determined pursuant to a specified formula at any date Taxpayer determines, in Taxpayer's discretion, on or before Date 3. The date that such contribution is made is known as the "Date of Full Endowment." Taxpayer's commitment to contribute the endowment amount is expressly made conditional on University fulfilling certain obligations specified in section 2.1 of the Funding Agreement. If Taxpayer dies before contributing the endowment amount and before becoming obligated to do so, Foundation will make the endowment contribution, at any date it determines, in its discretion, on or before Date 3. Foundation's commitment to contribute the endowment amount is also expressly conditioned on University fulfilling the obligations specified in section 2.1. After the Date of Full Endowment, all operations of the Research Institute will be funded by University or other third party sources, and neither Taxpayer nor Foundation will have any further commitment with respect to the funding of the Research Institute.

Section 1.7 specifically addresses the parties' obligations in the event of Taxpayer's death as follows:

> <u>Death of [Taxpayer]</u>. In the event of the death of [Taxpayer] prior to the Date of Full Endowment: (a) if such death occurs after the budget for a fiscal year has been approved by the Board, the estate of [Taxpayer] shall be obligated to fulfill the Annual Funding Commitment for such fiscal year to the extent not fulfilled by [Taxpayer] prior to the date of death; (b) the estate of [Taxpayer] shall be obligated to make any other payment hereunder payable by [Taxpayer] on or before the date of such death; (c) if such death occurs after [University] has fulfilled all of its obligations under Section 2.1 hereof for each fiscal year through the fiscal year ending [Date 4], the estate of [Taxpayer] shall be obligated to make the payment described in Section 1.6; (d) neither [Taxpayer] nor the estate of [Taxpayer] shall have any further obligation under this Agreement except as described in this Section 1.7, including without limitation any obligation under Section 1.6, with respect to the funding of [the Research Institute]; and (e) the Foundation shall perform and discharge all of its own obligations hereunder. [Taxpayer] hereby agrees that he will provide in his will that, if he dies before the earlier of (a) the Date of Full Endowment or (b) the fulfillment by [University] of all of its obligations under Section 2.1 hereof for each fiscal year through the fiscal year ending [Date 4], his estate shall be required to transfer to the Foundation assets of the type

described in the first sentence of Section 1.2(a) hereof, in an amount equal to at least 20 times the Maximum Annual Funding Commitment for the year immediately preceding the date of his death, to enable the Foundation to discharge in full all of its obligations hereunder; provided, however, that if at the date of death of [Taxpayer] the Foundation is not described in section 2055 of the Code, his estate shall be required to make such transfer to [University], and the Foundation shall have no further obligations under this Agreement.

Section 1.9 of the Funding Agreement provides:

> Condition of Obligations. Notwithstanding anything to the contrary in the foregoing, and notwithstanding any action taken or not taken by [University] or [the Research Institute] in reliance on any obligations or payment to be incurred or made pursuant to this Agreement, each obligation of [Taxpayer], the estate of [Taxpayer], and/or the Foundation to make any payment under this Agreement is hereby expressly made conditional upon [University]'s having fulfilled all of its obligations under Section 2.1 hereof for each fiscal year preceding the fiscal year in which such payment is to be made.

Section 2.1 of the Funding Agreement requires University to make annual contributions toward the funding of the Research Institute based on a specified formula.

Taxpayer has represented that he plans to amend his will to carry out the terms of the Funding Agreement by including two provisions. First, with respect to amounts Taxpayer becomes obligated to pay during his lifetime which, under the Funding Agreement, are to be paid by his estate if unpaid at death, the following provision is added:

> Reference is hereby specifically made to the Amended and Restated Agreement for the Establishment and Funding of [the Research Institute], effective _________, by and among [University], [Foundation], and me, as now in existence and which has been signed prior to my will (hereinafter referred to in my will as "said Funding Agreement"). I direct my Executrix to pay upon my death to [University], if it is then described in section 2055 of the Code, or to any organization which has been substituted therefor under said Funding Agreement which is then so described, any and all amounts that I may become obligated to pay during my lifetime that are unpaid at my death and which my estate becomes obligated to pay pursuant to section 1.7 of said Funding Agreement.

Second, regarding Taxpayer's agreement under Section 1.7 to transfer assets to Foundation in the event he dies prior to the earlier of the Date of Full Endowment or the fulfillment by University of all its obligations through Date 4, the following is added:

> I give, devise and bequeath the remainder of my property, but not including any property over which I have any power of appointment, to [Foundation], a charitable foundation incorporated in [State], with its principal place of business in [Location L], if said Foundation is in existence at the time of my death and is then qualified as a charitable organization under section 501(c)(3) of the Code to which appropriate contributions would be deductible under sections 170, 2055 and 2522 of the Code, or if said Foundation is not then in existence or is not so qualified: (i) I give to said [University] if it is then so qualified (or to any organization which has been substituted therefor under said Funding Agreement which is so qualified), the amount, if any, which my estate is required to transfer to said [University] (or to such substituted organization), in accordance with the last sentence of Section 1.7 of said Funding Agreement, and (ii) I give, devise and bequeath the balance thereof] to such one or more charitable organizations as is or are then so qualified, and in such proportions among such organizations if more than one, as the Executrix of my will, in her absolute and uncontrolled discretion, shall select.

Section 1.8 of the Funding Agreement sets forth provisions to substitute a different donee organization in the event that either University or the Research Institute becomes ineligible to receive contributions deductible for federal income, gift or estate tax purposes:

> Change in Status. If (a) at the time any payment is to be made hereunder by a Contributor or by the estate of [Taxpayer]; (b) at the time any gift by [Taxpayer] arising from an obligation to make any such payment would be complete for United States federal gift tax purposes; or (c) (with respect only to any payment to be made by the estate of [Taxpayer]) at the time of the death of [Taxpayer], either [University] or [the Research Institute] is not an organization contributions to which are deductible pursuant to sections 170(a) and 170(b)(1)(A), 2055(a) and 2522 of the Code, then such payment shall be made to, and [Taxpayer] or the estate of [Taxpayer], as the case may be, shall have no obligation to make any payment other than to, such other organization (the “Substituted Donee Organization”), contributions to which are so deductible and possessing purposes permitting it to carry on the functions of [the Research Institute], as shall be selected by the Board; provided, however, that such Substituted Donee Organization shall have executed and acknowledged such instruments, in form and substance satisfactory to the Board, as the Board deems necessary or desirable to effectuate such substitution and to confirm the agreement of the Substituted Donee Organization to be bound by all the terms and provisions of this Agreement; and provided, further, that in the event that no Substituted Donee Organization is so selected (or, if selected, has failed to execute and acknowledge such

documents), then such payment shall be made to, and [Taxpayer] or the estate of [Taxpayer], as the case may be, shall have no obligation to make payment other than to, such organization as is appointed by a court having jurisdiction in the premises in accordance with the doctrine of cy près.

The Research Institute is to be governed by a Board of Directors consisting of nine members. Article II, Section 2 of the Research Institute's bylaws provide that the initial Board is to be appointed as follows:

> Three (3) members shall be selected by the President of [University] (the "[University] Members"), three (3) members shall be selected by [Taxpayer] (the "Donor Members"), and three (3) members (the "Independent Members") shall be selected by majority vote of the [University] Members and Donor Members; provided, however, that in the event that all three (3) [University] Members have voted affirmatively with respect to a proposed Independent Member and all three (3) Donor Members have voted negatively with respect to such proposed Independent member, the President of [University] shall cast a vote deciding whether the proposed Independent Member shall be appointed. ***Any [University] Member may be removed and any successor to any of the [University] members shall be selected only by [University]; any Donor Member may be removed with or without cause and any successor to any of the Donor Members shall be selected by [Taxpayer] providing, however, that the immediate successor to any Donor Member so removed shall not be related or subordinate to [Taxpayer] within the meaning of section 672(c) of the Code, and provided further that [Taxpayer] shall be ineligible to participate in any amendment to the foregoing proviso . . . .

The initial Donor Members will be Taxpayer, Taxpayer's spouse and Taxpayer's daughter. An Independent Member cannot be (1) a current or former employee, officer, trustee, or board member of University, Corporation, or any of their respective affiliates; (2) a consultant who currently derives or has formerly derived any material amount of compensation from University, Corporation or any of their respective affiliates; or (3) a member of Taxpayer's family.

Article III, Section 4 of the bylaws for the Research Institute provides:

> A majority of the Board members then in office shall constitute a quorum, provided that at least one [University] Member is present; a smaller number may adjourn finally or from time to time without further notice until a quorum is secured. If a quorum is present, a majority of the Board members present may take any action except as otherwise provided in these By-Laws or the Agreement. Each Board member shall have one vote and there shall be no voting by proxy. Notwithstanding the generality

> of the foregoing: (a) a majority of the [University] Board members may nullify any action which is materially in conflict with [University]'s corporate charter or the [University] Policies and Procedures as in effect from time to time after having notified the Director and other Board Members in writing of such action and the reasons therefor; (b) [Taxpayer] shall not be eligible to vote, or otherwise participate or exercise any power, with respect to the disposition of the principal or income of any funds contributed by [Taxpayer], including the selection of any substitute charity pursuant to Article VI of these By-Laws, or be eligible to participate in any amendment to these By-Laws that would make him so eligible, and in the event that contributions are received from other donors, the Board shall take appropriate action to segregate and maintain such funds separately from any funds contributed by [Taxpayer]; and (c) neither [Taxpayer] nor any Donor Member who is related or subordinate to [Taxpayer] (within the meaning of section 672(c) of the Code) shall have the right to participate in any vote, grant of proxies, or exercise of similar rights with respect to any shares of stock in a controlled corporation, as defined in section 2036(b) of the Code (applied as if [Taxpayer] were the decedent), received by [the Research Institute] from [Taxpayer].

LAW:

A. Federal Gift Tax

Section 2501 provides that a tax is imposed each calendar year on the transfer of property by gift during the calendar year by any individual.

Section 2511 provides that the gift tax shall apply whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible. Section 25.2511-2(b) of the Gift Tax Regulations provides that as to any property, or part thereof, of which the donor has so parted with dominion and control as to leave in him no power to change its disposition, whether for his own benefit or for the benefit of another, the gift is incomplete. Section 25.2511-2(c) provides that a gift is incomplete if and to the extent that a reserved power gives the donor the power to name new beneficiaries or to change the interests of the beneficiaries as between themselves unless the power is a fiduciary power limited by a fixed or ascertainable standard.

Section 2522(a) provides that in computing taxable gifts for the calendar year, there shall be allowed as a deduction the amount of all gifts made during the year to or for the use of the charitable purposes described therein.

Rev. Rul. 95-58, 1995-2 C.B. 191, holds that for purposes of §§ 2036, 2038, and 2511, the settlor of a trust that grants the trustee broad discretionary powers of distribution, will not be considered as having the discretionary powers of the trustee where the settlor can remove or replace a trustee with a person who is not related or subordinate to the settlor under § 672(c).

Rev. Rul. 81-110, 1981-1 C.B. 479, provides that an individual's pledge to a charitable organization is a completed transfer for gift tax purposes when the pledge becomes a binding obligation of the pledgor.

In Rev. Rul. 79-384, 1979-2 C.B. 344, A promised to pay B, A's child, $10,000 if B graduated from college. B graduated from college and demanded payment of the $10,000. Citing Harris v. Commissioner, 178 F.2d 861 (2d Cir. 1949), the ruling holds that A's promise to pay B becomes a completed gift, subject to gift tax, in the year in which A's obligation became binding and not when the discharging payments are made. A became bound to make the payment on B's graduation. Therefore, A made a completed gift at that time.

Under State law, a promise to give property to a charitable institution may become enforceable if the promise is supported by consideration or if the charity acts in reasonable reliance on the promise. However, reliance does not create an obligation where explicit conditions must be met before the promises become binding by the terms of the agreement.

B. Federal Estate Tax

Section 2033 provides for the inclusion in the gross estate of any property in which the decedent had an interest at the time of decedent's death.

Section 2036(a) provides that the value of the gross estate includes the value of all property to the extent of any interest in the property that was transferred by the decedent (for less than adequate consideration) if the decedent has retained for life the right, alone or in conjunction with any person, to designate the person who shall possess or enjoy the property or the income therefrom.

Section 2036(b) provides that for purposes of § 2036(a)(1), the retention of the right to vote (directly or indirectly) shares of stock of a controlled corporation shall be considered to be a retention of the enjoyment of transferred property. A corporation is treated as a controlled corporation if, at any time after the transfer of the property and during the 3-year period ending on the date of the decedent's death, the decedent owned (with the application of § 318), or had the right (either alone or in conjunction with any person) to vote stock possessing at least 20 percent of the total combined voting power of all classes of stock.

Under § 2038(a)(1), the value of the gross estate includes the value of all property to the extent of any interest in the property that was transferred by the decedent (for less than adequate consideration) if the decedent held a power, exercisable alone or in conjunction with any person, to change the enjoyment of the property through the exercise of a power to alter, amend, revoke, or terminate.

For purposes of §§ 2036 and 2038, it is immaterial in what capacity the retained power was exercisable by the decedent. Thus, if a decedent transferred property in trust while retaining, as trustee, the discretionary power to distribute the principal and income, the trust property is includible in the decedent's gross estate. However, Rev. Rul. 95-58, 1995-2 C.B. 191, holds that for purposes of §§ 2036, 2038, and 2511, the settlor of a trust that grants the trustee broad discretionary powers of distribution, will not be considered as having the discretionary powers of the trustee where the settlor can remove or replace a trustee with a person who is not related or subordinate to the settlor under § 672(c).

Rev. Rul. 72-552, 1972-2 C.B. 525, considers a situation where, at the decedent's death, 90% of a charitable corporation's assets had been transferred to the corporation by the decedent. Decedent was one of the organizing members of the corporation, one of its original directors, and its president. The corporation's bylaws authorized the decedent, as president, and in conjunction with the vice-president, to direct the disposition of the corporation's funds for charitable purposes. Therefore, the revenue ruling concludes that the decedent, in his capacity as president, retained the right in conjunction with others, to designate the persons who shall posses or enjoy the property transferred to the corporation. Accordingly, the value of the property decedent transferred to the corporation is includible in the decedent's gross estate under § 2036.

Section 2053(a)(3) provides that the value of the taxable estate is determined by deducting from the value of the gross estate such amounts for claims against the estate. Section 20.2053-5 provides that a pledge or a subscription, evidenced by a promissory note or otherwise, even though enforceable against the estate, is deductible only to the extent that: (a) liability therefore was contracted bona fide and for an adequate and full consideration in cash or its equivalent; or (b) it would have constituted an allowable deduction under § 2055 if it had been a bequest.

Section 2055(a) provides that the value of the taxable estate is determined by deducting from the value of the gross estate the amount of all bequests, legacies, devises, or transfers to certain organizations described in § 2055(a)(1) - (5).

C. <u>Federal Income Tax</u>

Section 170 generally allows a deduction for charitable contributions made during the taxable year.

Under § 170(c)(2), a charitable contribution is defined in part as a contribution or gift to or for the use of:

A corporation, trust, or community chest, fund, or foundation –

> (A) created or organized in the United States or in any possession thereof, or under the law of the United States, any State, the District of Columbia, or any possession of the United States;
> (B) organized and operated exclusively for religious, charitable, scientific, literary or educational purposes . . . ;
> (C) no part of the net earnings of which inures to the benefit of any private shareholder or individual; and
> (D) which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation. . . .

Section 170(b)(1)(A)(viii) provides that, in the case of an individual, the deduction for a charitable contribution to an organization described in § 509(a)(3) shall be allowed to the extent that the aggregate of taxpayer’s contributions does not exceed 50% of the taxpayer’s contribution base for the taxable year. Section 170(b)(1)(C)(i) provides that contributions of capital gain property to an organization described in § 170(b)(1)(A) may not exceed 30% of the taxpayer’s contribution base for the taxable year. Under § 170(b)(1)(C)(3), a donor may elect to deduct the basis in the property, in which case the 50% limitation will apply. Under § 170(b)(1)(C)(iv), “capital gain property” is any capital asset the sale of which at its fair market value at the time of the contribution would have resulted in gain which would have been long-term capital gain.

For income tax purposes, charitable contributions are generally deductible when payment is made, irrespective of the method of accounting employed or of the date on which the contribution is pledged. Section 1.170A-1(a)(1) of the Income Tax Regulations; Rev. Rul. 55-410, 1955-1 C.B. 297. See H.R. Rep. No. 1860, 75th Cong., 3d Sess. 19 (1938). Unlike the rules pertaining to gift tax, under the rules pertaining to income tax a pledge, even if legally enforceable before payment, is not deductible until it is paid. Rev. Rul. 81-110, 1981-1 C.B. 479. Ordinarily, payment is made upon delivery. Section 1.170A-1(b) of the Regulations. If, as of the date of a gift, a transfer is dependent upon the happening of a precedent event to become effective, no deduction is allowable unless the possibility that the transfer will not become effective is so remote as to be negligible. Section 1.170A-1(e) of the Regulations.

Section 170(a)(1) provides that a deduction for any charitable contribution shall be allowed only if verified under regulations prescribed by the Secretary. Section 1.170A-1(c)(1) of the Regulations provides that, if a charitable contribution is made in property other than money, the amount of the contribution is the fair market value of the property at the time of the contribution, reduced as provided in § 170(e)(1) and § 1.170A-4(a) of the Regulations.

Section 170(e)(1)(A) provides that the amount of the charitable contribution of property otherwise taken into account under § 170 in part shall be reduced by the amount of gain that would not have been long-term capital gain if the property had been sold at its fair market value (determined at the time of the contribution). Under § 170(e)(1)(B), a similar rule applies for contributions of property to or for the use of a private foundation (as described in section 509(a)), other than a private foundation described in subsection (b)(1)(E).

Under § 1.170A-1(c)(2) of the Regulations, the "fair market value" of property, for the purpose of determining the amount of a charitable contribution, is the price at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell, and both having a reasonable knowledge of the relevant facts.

Charitable contributions must be properly substantiated. Under § 1.170A-13(c)(2) of the Regulations, a donor who claims or reports a deduction in an amount more than $5,000, with respect to a charitable contribution of property made after December 31, 1984, must obtain a qualified appraisal for the contributed property. Section 1.170A-13(c)(3)(i) of the Regulations requires that the appraisal (A) not be made earlier than 60 days prior to the date of the contribution; (B) be prepared, signed, and dated by a qualified appraiser; (C) include certain information set forth in § 1.170A-13(c)(3)(ii) of the Regulations, and (D) not involve a prohibited fee. Section 1.170A-13 of the Regulations provides detailed rules regarding satisfaction of these requirements.

In addition, § 170(f)(8) provides that, with respect to contributions of $250 or more, the deduction is allowable only if the donor obtains a written acknowledgment from the donee organization on or before the date the donor files the return reporting the contribution or on or before the due date (including extensions) of the return, whichever comes first.

In Palmer v. Commissioner, 62 T.C. 684 (1974), affd. on other grounds, 523 F.2d 1308 (8th Cir. 1975), acq., 1978-1 C.B. 2, the Tax Court held that a gift of stock by a shareholder to a charity that was followed the next day by a redemption of the stock by the issuing corporation should not be recharacterized as a redemption by the donor followed by a gift of the proceeds. In Rev. Rul. 78-197, 1978-1 C.B. 83, the Service announced that it will treat the proceeds of a redemption of stock under facts similar to those in Palmer as income to the donor only if the donee is legally bound or can be compelled by the corporation to surrender the shares for redemption.

In Palmer, the donor had voting control of a corporation and was the controlling trustee of a tax-exempt private foundation. Pursuant to a single plan, the taxpayer donated stock of the corporation to the foundation, and the foundation also purchased stock from a trust constructively owned by the taxpayer. On the same day, when the foundation then owned more than 80 percent of the stock, the corporation redeemed the stock held by the foundation. The court in Palmer respected the form of the transaction as a redemption of stock from the foundation because the foundation was not a sham, the transfer of stock was a valid gift, and the foundation was not bound to redeem the stock.

In Blake v. Commissioner, 697 F.2d 473, 480-481 (2d Cir. 1982), the Court of Appeals for the Second Circuit indicated that an expectation and advance understanding (between a contributing shareholder and a charity) that appreciated stock contributed by the shareholder would be sold by the charity and the proceeds used to purchase the shareholder's boat was enough to treat the shareholder as selling the stock (realizing gain) and then transferring the sale proceeds to the charity.

D. Federal Excise Tax

Section 4941(a)(1) imposes a tax on acts of self-dealing between a disqualified person and a private foundation, to be paid by any disqualified person (other than a foundation manager acting only as such) who participates in the act of self-dealing. Among other things, self-dealing means any direct or indirect transfer for the benefit of a disqualified person of the income or assets of a private foundation. Section 4941(d)(1)(E).

Section 509 defines a private foundation as any organization described in § 501(c)(3), unless the organization meets certain exceptions set forth in § 509(a).

Section 4946 defines a disqualified person. Under § 4946(a)(1)(A), a substantial contributor to a foundation is a disqualified person. Under § 507(d)(2), a substantial contributor means any person who contributed or bequeathed an aggregate amount of more than $5,000 to the private foundation, if such amount is more than 2% of the total contributions and bequests received by the foundation before the close of the foundation's taxable year. In addition, under § 4946(a)(1)(G), an estate with respect to which certain persons described in § 4941(a)(1)(A), (B), (C), and (D), including family members of such persons described in § 4946(d), hold more than 35% of the beneficial interests, is a disqualified person.

ANALYSIS:

Ruling Requests 1-6--Federal Estate and Gift Tax

Under section 1.1 of the Funding Agreement, Taxpayer will become obligated to make certain annual payments (Annual Funding Commitment) to University. Taxpayer's obligation to make these annual payments terminates at the earlier of his death, or payment of the endowment amount provided in section 1.6. After Taxpayer's death, assuming Taxpayer did not pay the endowment amount during his lifetime, the Foundation becomes obligated to make the Annual Funding Commitment payment. However, under section 1.9, Taxpayer's (and Foundation's) obligation to make these annual payments in any year is conditioned on University fulfilling its obligation under section 2.1 to make annual contributions towards the funding of the Research Institute for each fiscal year preceding the fiscal year in which the payment is made.

In addition, as noted above, under section 1.6, Taxpayer has agreed to contribute a lump sum endowment amount to University on or before Date 3. However, although Taxpayer can make this contribution if he so chooses prior to Date 4, Taxpayer only becomes obligated to make this contribution on Date 3, and only if University has fulfilled its obligation to make annual contributions towards the funding of the Research Institute through Date 4. If Taxpayer dies prior to paying the endowment amount, and before being obligated to do so, Foundation will be obligated to make the payment under the same terms and conditions.

Under these circumstances, as was the case in Rev. Rul. 79-384 cited above, the agreement to make the Annual Funding Commitment payments under section 1.1 is conditioned on University's fulfillment of its obligations under the agreement. Accordingly, Taxpayer's agreement to make the Annual Funding Commitment payments will not constitute a completed gift for gift tax purposes until Taxpayer becomes legally obligated in any given year to make the payment; that is when University fulfills its obligations under the Funding Agreement in any given year. Similarly, Taxpayer's agreement to contribute the endowment amount under section 1.6 at some future time will not constitute a completed gift until Taxpayer becomes legally obligated to make the payment under the agreement; that is, when University fulfills its obligations under the Funding Agreement through Date 4, or at such time as Taxpayer actually makes the payment prior to the time the obligation arises.

Under section 1.7 of the Funding Agreement, in the event Taxpayer dies prior to paying the endowment amount, Taxpayer has also agreed that his estate will be obligated to pay any Annual Funding Commitment payment due for the fiscal year of Taxpayer's death. Further, if Taxpayer dies after University has fulfilled its obligation to make annual contributions towards the funding of the Research Institute through Date 4, then Taxpayer's estate is obligated to pay the endowment amount under section 1.6. Finally, Taxpayer agrees to provide in his will that, if he dies prior to paying the endowment amount and prior to University's fulfillment of its funding obligations through Date 4, his estate will be required to transfer to Foundation an amount equal to the endowment amount to enable the Foundation to discharge its obligation under section 1.1 to continue paying the Annual Funding Commitment under section 1.1 and to pay the endowment amount under section 1.6. As noted above, under section 1.9, the obligation of Taxpayer's estate to make any of these payments either to University or Foundation is conditioned on University fulfilling its obligations under section 2.1 of the Funding Agreement.

As discussed above, Taxpayer's agreement that his estate will make the payments described in section 1.7 is also conditioned on University fulfilling its obligations under the Funding Agreement. Accordingly, Taxpayer's agreement under section 1.7 that his estate will make the payments described therein does not constitute a completed gift for gift tax purposes.

Taxpayer proposes to amend his will, as described above, to direct that the Executrix pay certain amounts to University representing amounts Taxpayer becomes obligated to pay during his lifetime, that if unpaid at his death, are to be paid by his estate under section 1.7 of the Agreement. Under § 20.2053-5, as discussed above, assuming University is described in § 2055 at the time of Taxpayer's death, then amounts paid in satisfaction of these obligations to the extent determinable on the date of death and enforceable against the estate, will be deductible under § 2053.

Taxpayer also proposes to amend his will to provide for a residuary bequest, as described above, to Foundation, or if Foundation is not described in §§ 170, 2055, and 2522, at the time of Taxpayer's death, to and/or to such organizations that are so described, as the Executrix selects. Amounts passing pursuant to this residuary bequest will qualify for an estate tax charitable deduction under § 2055.

With respect to Taxpayer's pledge of Corporation stock under Section 1.5 of the Funding Agreement, Taxpayer is not transferring such property to University or the Research Institute. The Funding Agreement and the Pledge Agreement specifically provide that University is not acquiring any interest, right or claim with respect to such assets, except as a general creditor of Taxpayer.

The initial Taxpayer Members on the Board will be Taxpayer, Taxpayer's spouse, and Taxpayer's daughter. Although Taxpayer will serve on the Board, funds contributed by Taxpayer will be segregated. Taxpayer is specifically prohibited from any eligibility to vote or otherwise participate or exercise any power, with respect to the disposition of principal or income of any funds contributed by Taxpayer, including the selection of any substitute charity in the unlikely event that the Research Institute and University fail to be qualified charitable organizations. In addition, Taxpayer cannot participate in any amendment of the bylaws of the Research Institute that would change the limits on his powers.

The Research Institute is a separate supporting organization of University. Taxpayer's contributions are designated to carry out the Research Institute's research activities. The Research Institute will not make any grants of Taxpayer's contributions to any outside organizations. In the event of any dissolution of the Research Institute, the assets of the Research Institute will be conveyed to University. Under such circumstances, participation by Taxpayer's spouse and Taxpayer's daughter on the Board of the Research Institute are primarily with respect to budgetary decision-making within the Research Institute. There is no understanding, express or implied, between Taxpayer and his spouse or his daughter regarding their participation on the Board. Neither Taxpayer nor any Taxpayer Member who is related or subordinate to Taxpayer, within the meaning of § 672(c), has the right to participate in any vote, grant of proxies, or exercise of similar rights with respect to any shares of Corporation received by the Research Institute from Taxpayer. Subsequent Taxpayer Members selected by Taxpayer cannot be related or subordinate to Taxpayer within the meaning of § 672.

Ruling Request 7–Charitable Contribution

Under the plan outlined in the Funding Agreement, Taxpayer will make certain annual payments to University for the benefit of the Research Institute. Taxpayer may make these payments in the form of cash and/or shares of Corporation stock or other property.

Taxpayer's contributions will be to University for the Research Institute, which is an educational organization qualified under §§ 501(c)(3) and 509(a)(3). To be eligible to receive contributions deductible under § 170, a charity must satisfy all of the requirements of § 170(c)(2). Taxpayer represents that both University and the Research Institute will at all material times satisfy all of the requirements of § 170(c)(2). Therefore, University and Research Institute will constitute eligible donees.

Unlike the rules pertaining to gift tax, under the § 170 rules the making or delivery of a pledge, even if legally enforceable before payment under State law, is immaterial; a charitable contribution is deductible when payment is made, irrespective of the method of accounting employed or of the date on which the contribution is pledged. Section 1.170A-1(a)(1) of the Income Tax Regulations; Rev. Rul. 81-110, 1981-1 C.B. 479; Rev. Rul. 55-410, 1955-1 C.B. 297; see H.R. Rep. No. 75-1860 at 19 (1938). Payment is made when it is delivered to the charity or to an agent of the charity. Rev. Rul. 85-184, 1985-2 C.B. 84. A Taxpayer's charitable contributions generally will be deductible when paid. In this case, when Taxpayer transfers money or other property to University for Research Institute, there will be a charitable contribution at the time of the transfer.

Taxpayer's funding commitment will be secured by a non-recourse pledge of securities to University. In the event of a default by Taxpayer, the Pledge Agreement provides that University shall have the right, 30 days after notice from University to Taxpayer of an uncured default, to transfer to itself the number of pledged shares substantially equal in value to the amount of the defaulted obligation. We view University's right to outright ownership of these shares in a default situation as similar to a contingent gift, the contingency of which is satisfied upon the expiration of 30 days after notice of an uncured default. On the 31st day after notice of default, University will be entitled to transfer the shares to itself, and the possibility that the transfer will not become effective is so remote as to be negligible within the meaning of § 1.170A-1(e) of the Regulations. In the event of such a default, therefore, Taxpayer will be entitled to a charitable contribution deduction when University is entitled to transfer pledged shares to itself.

Under the Funding Agreement, Taxpayer may satisfy his funding commitment with shares of Corporation stock or other marketable securities. Under § 170(e)(1)(A), the amount treated as a charitable contribution of property shall be reduced by the amount of gain that would not have been long-term capital gain if the property had been sold at its fair market value (determined at the time of the contribution). So long as any Corporation common stock and any other marketable securities with which Taxpayer may satisfy the requirements of the Funding Agreement are capital assets that have been held for more than one year, the reduction under § 170(e)(1)(A) will not apply. The reduction rule under § 170(e)(1)(B) for contributions of property to private foundations is not applicable in this case because the Research Institute is an organization described in § 509(a)(3) and is not a private foundation. Therefore, the amount of Taxpayer's charitable contribution will be the fair market value of the contributed shares.

To the extent that Taxpayer transfers shares of appreciated Corporation stock or other marketable securities held for more than one year to University for the Research Institute, those shares will constitute "capital gain property" within the meaning of § 170(b)(1)(C)(iv). In that event, under § 170(b)(1)(C)(i), Taxpayer's charitable contribution deduction may not exceed 30% of Taxpayer's contribution base for the taxable year, unless Taxpayer makes the election under § 170(b)(1)(C)(iii).

Ruling Requests 8 and 9–Redemption/Step Transaction

In the event that Taxpayer satisfies the Annual Funding Commitment with shares of Corporation stock, University may, in its sole discretion, tender those shares to Taxpayer for purchase. Taxpayer will not be obligated to purchase the shares unless University tenders them to Corporation for redemption within 30 days after the Current ESOP Appraisal Delivery Date, and Corporation does not redeem them within 60 days after the Current ESOP Appraisal Delivery Date, at the then-Current Appraised Share Value. The option to tender the shares to Corporation will be completely within the discretion of University, which will be under no obligation to tender any shares of Corporation common stock to either Corporation for redemption or to Taxpayer for purchase. Therefore, in the event that Corporation purchases any contributed shares of its common stock from University, the form of the transaction will be respected.

Taxpayer also asks us to rule that any sale or exchange by University of any other appreciated property that it receives from Taxpayer under the Funding Agreement will not result in gain or loss to Taxpayer. So long as there is no expectation or advance understanding that University will sell any such appreciated property, and so long as such a sale or exchange is completely within the discretion of University, the form of the transaction will be respected. Blake v. Commissioner, supra at 480-481 (2d Cir. 1982).

Ruling Request 10–Appraisal of Contributed Stock

Under Section 1.2 of the Funding Agreement, if Taxpayer makes a charitable contribution of Corporation shares to University on the same date that a valuation is otherwise required to be prepared for the Corporation ESOP, a Current ESOP Appraisal will be used as the appraisal for purposes of the substantiation requirements of § 170. Taxpayer represents that the Current ESOP Appraisal will satisfy all of the requirements under § 1.170A-13(c)(3) of the Income Tax Regulations. Based on this representation, the Current ESOP Appraisal will be a qualified appraisal within the meaning of those Regulations. If Taxpayer makes a charitable contribution of Corporation shares on a date that a Current ESOP Appraisal is not available, Taxpayer and University will jointly select a qualified appraiser to make a qualified appraisal of the value of the shares as of the date of the contribution. This appraisal must comply with all of the requirements of § 1.170A-13(c) of the Regulations.

Ruling Request 11–Self Dealing

Taxpayer will be a disqualified person with respect to Foundation during his lifetime, by virtue of being a substantial contributor to Foundation. Taxpayer represents that persons described in § 4941(a)(1)(A), (B), (C), and (D) of the Code, including Taxpayer's family members described in § 4946(d), will not hold more than 35% of the beneficial interest in Taxpayer's estate. Accordingly, Taxpayer's estate will not be a disqualified person with respect to Foundation under § 4946(a)(1)(G). It is possible, however, that Taxpayer's estate may become a disqualified person with respect to Foundation by virtue of being a substantial contributor to Foundation.

No contribution made by Foundation under the Funding Agreement will satisfy an obligation of Taxpayer. Any obligation incurred under the Funding Agreement by Taxpayer during his lifetime and still unpaid at the date of his death will become an obligation of his estate. Foundation will become obligated to make contributions only for fiscal years during the Foundation Funding Period, and then only after University has fulfilled all of its core support obligations for each such fiscal year. Similarly, Foundation will become obligated to contribute the Endowment Amount only if Taxpayer dies before contributing the Endowment Amount to University and before becoming obligated to do so, and then only after University has fulfilled all of its core support obligations for each fiscal year through the fiscal year ending Date 4.

In addition, Foundation will not become obligated during Taxpayer's lifetime to make any contributions to University under the Funding Agreement, and will not make any such contributions during Taxpayer's lifetime. After Taxpayer's death, Taxpayer will no longer be a disqualified person.

No contribution by Foundation will satisfy an obligation of Taxpayer's estate. Accordingly, in the event the estate becomes a disqualified person, no such contribution will constitute an act of self-dealing under § 4941(d)(1)(E) with respect to the estate.

CONCLUSIONS:

Based on the facts and information received, we conclude as follows:

1. Taxpayer's agreement under Section 1.1 of the Funding Agreement, to provide annual funding to University for the Research Institute, does not constitute a completed gift for federal gift tax purposes until Taxpayer becomes obligated, in a given

year, to provide such funding in an ascertainable amount pursuant to a Board-approved budget for such year. When any such gift is complete, the value of such gift qualifies for the federal gift tax charitable deduction under § 2522 provided University is described in § 2522(a) at that time. Any subsequent payment made by Taxpayer in satisfaction of such obligation is not a transfer for federal gift tax purposes.

2. Taxpayer's agreement to pay the endowment amount under Section 1.6 of the Funding Agreement will constitute a completed gift for federal gift tax purposes on the earlier of: (i) actual payment of the endowment amount to University pursuant to Section 1.6; and (ii) the date on which University's obligations under Section 2.1 for all fiscal years through Date 4, have been ascertained and paid in accordance with such section. At such time, the gift will be deductible for federal gift tax purposes under section 2522. Any subsequent payment by Taxpayer in satisfaction of the promise will not be a transfer for federal gift tax purposes.

3. Taxpayer's agreement under Section 1.7 of the Funding Agreement to provide in his will that, if Taxpayer dies prior to the date on which University's obligations under Section 2.1 for all fiscal years through Date 4, have been ascertained and paid in full in accordance with such section, his estate will pay a specified sum to Foundation (or University), will not constitute a completed gift for federal gift tax purposes.

4. Assuming University is described in § 2055 at the time of Taxpayer's death, then amounts paid by Taxpayer's estate under Section 1.7 of the Funding Agreement, representing amounts Taxpayer becomes obligated to pay during his lifetime, that are unpaid at his death, will be deductible under § 2053 and § 20.2053-5 of the Estate Tax Regulations to the extent determinable on the date of death and enforceable against the estate.

Amounts passing to Foundation or to other organizations described in § 2055 pursuant to the residuary bequest in Taxpayer's will, as proposed, will qualify for an estate tax charitable deduction under § 2055.

5. Taxpayer's deposit of securities pursuant to the Pledge Agreement, to secure Taxpayer's obligations under the Funding Agreement, is not a transfer of property for federal gift tax purposes.

6. The assets held by University for the Research Institute will not be includible under § 2036 or § 2038 in Taxpayer's gross estate for federal estate tax purposes at his death.

7. Each contribution by Taxpayer of cash and/or shares of Corporation stock or other capital gain property held by Taxpayer for more than one year to University for the Research Institute pursuant to the Funding Agreement will qualify for the federal income tax charitable contribution deduction in the year of such payment or transfer, in

the full amount of such cash or the full fair market value of such stock or other property, to the extent allowed under § 170. To the extent that in a taxable year Taxpayer transfers shares of appreciated Corporation stock or other marketable securities held for more than one year to University for the Research Institute, Taxpayer's charitable contribution deduction may not exceed 30% of Taxpayer's contribution base for that year, unless Taxpayer makes the election under § 170(b)(1)(C)(iii). For purposes of this ruling, a transfer of securities to University upon an uncured material default under the Pledge Agreement will be treated as a transfer of such securities by Taxpayer to University under the Funding Agreement, in satisfaction of the defaulted contribution obligation, upon the expiration of 30 days after notice of the uncured material default.

8. In the event that Corporation purchases any shares of its common stock from University, such purchase will be treated as a redemption of such shares from University, and will not be treated as a redemption of shares of Corporation common stock from Taxpayer or as a distribution from Corporation to Taxpayer. So long as there is no pre-arranged agreement or understanding concerning University's sale or exchange of any appreciated property contributed to it by Taxpayer, and so long as such a sale or exchange is completely within the discretion of University, the form of the transaction will be respected.

9. So long as there is no pre-arranged agreement or understanding concerning University's sale or exchange of shares of Corporation common stock or other marketable securities contributed to University by Taxpayer, and so long as such a sale or exchange is completely within the discretion of University, Taxpayer will not realize gain or loss for federal income tax purposes upon his satisfaction of his contribution commitment as set forth in the Funding Agreement by delivering such shares to University, or upon a sale or other disposition of such shares by University under the Pledge Agreement. For purposes of this ruling, a transfer of securities to University upon an uncured material default under the Pledge Agreement will be treated as a transfer, upon the expiration of 30 days after notice of the uncured material default, of such securities by Taxpayer to University under the Funding Agreement, in satisfaction of the defaulted contribution obligation.

10. In the event that a Current ESOP Appraisal is available with respect to any contribution of Corporation shares, then, provided such Current ESOP Appraisal meets all of the requirements under § 1.170A-13(c) of the Income Tax Regulations, such Current ESOP Appraisal will constitute a qualified appraisal for purposes of substantiating the charitable contribution deduction.

11. Neither Foundation's contributions of Annual Funding Commitments during the Foundation Funding Period pursuant to Section 1.1 of the Funding Agreement, nor Foundation's contribution of the Endowment Amount pursuant to Section 1.6 of the Funding Agreement, will constitute an act of self-dealing between Foundation and Taxpayer or his estate. In addition, Foundation's entering into the Funding Agreement will not constitute an act of self-dealing between Foundation and Taxpayer or his

estate. This ruling does not apply to any contribution made by Foundation that Foundation is not obligated to make under the Funding Agreement.

A copy of this letter ruling must be attached to any income tax return to which it is relevant. We enclose a copy of the letter ruling for this purpose. Also enclosed is a copy of the letter ruling showing the deletions proposed to be made when it is disclosed under § 6110 of the Code.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any item discussed or referenced in this letter ruling.

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

Sincerely,

KARIN G. GROSS
Senior Technician Reviewer, Branch 1
Office of Associate Chief Counsel
(Income Tax & Accounting)

cc: