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Internal Revenue Service
Attn: CC:PA:LPD:PR (Notice 2018-43) Room 5203
P. O. Box 7604
Ben Franklin Station
Washington, DC 20024

Re: 2018-2019 Priority Guidance Plan; Recommendation for Guidance on Treatment
Of Early Termination of Charitable Remainder Trust Under Section 4941

Dear Sir/Madam:

I am writing to recommend for inclusion in the 2018-2019 Priority Guidance Plan guidance to clarify the tax consequences under Section 4941 of the Internal Revenue Code of 1986, as amended (the "Code"), of the early termination of a charitable remainder trust ("CRT") upon the assets of the trust being distributed to the noncharitable beneficiaries and charitable remainder beneficiaries in each of the following situations:

- (1) The CRT is a charitable remainder unitrust ("CRUT") subject to a net income limitation and the assets are apportioned between the noncharitable beneficiaries and the charitable remainder beneficiaries based on the valuation method prescribed under Section 664(e) of the Code, or
- (2) A private foundation is a charitable remainder beneficiary of the CRT.

It is respectfully submitted that clarification of the tax consequences under Section 4941 of the Code in these contexts is required as there is no clear authority in this area and, without guidance from the IRS, taxpayers seeking to engage in the early termination of the CRT, a transaction that otherwise accelerates the interest of the charitable remainder beneficiaries, risk running afoul of Section 4941 of the Code. Moreover, Rev. Proc. 2018-3,¹ § 3(74) specifically provides that the IRS will not issue rulings pertaining to the tax consequences under Section 4941 of the Code with respect to the early termination of a CRT in a transaction in which the

¹ 2018-1 IRB 118 (December 29, 2017). Rev. Proc. 2018-3, § 3(74) provides that a ruling will not be issued with respect to "Issues pertaining to the tax consequences of the termination of a charitable remainder trust (as defined in § 664) before the end of the trust term as defined in the trust's governing instrument in a transaction in which the trust beneficiaries receive their actuarial shares of the value of the trust assets."

trust beneficiaries receive their respective shares of the value of the trust assets. Because of the “no ruling” position of the IRS in this area, taxpayers will be unable to obtain a private letter ruling from the IRS in connection with the early termination of a CRT under the circumstances described in this letter.

APPLICATION OF SECTION 4941 TO EARLY TERMINATION OF CRTs

A CRT is included within the definition of a “split-interest trust” under Section 4947(a)(2) of the Code and, as such, is subject to certain Chapter 42 excise tax provisions otherwise applicable to private foundations.² The self-dealing rules of Section 4941 under Chapter 42 of the Code are specifically applicable to CRTs under Section 4947(a)(2).³ Because transactions with a CRTs are subject to the self-dealing rules of Section 4941,⁴ IRS rulings have indicated that when a CRT is terminated early as a result of the distribution by the trustee of all of trust assets, the charitable remainder beneficiaries must receive the actuarial present value of their remainder interests, with the remaining funds paid out to the noncharitable beneficiaries of the trust holding the term interests.⁵ Otherwise, an act of self-dealing under Section 4941 will be considered to have occurred.⁶

² Under its statutory provisions, for a CRT to fall within the purview of Section 4947(a)(2) and therefore become subject to certain private foundation excise tax provisions, it must be one which is: “a trust which is not exempt from tax under section 501(a), not all of the unexpired interests in which are devoted to one or more of the purposes described in section 170(c)(2)(B), and which has amounts in trust for which a deduction was allowed under section 170, 545(b)(2), 642(c), 2055, 2106(a)(2), or 2522.”

³ In recently issued Ltr. Rul. 201713003, a CRT was able to avoid the application of the private foundation excise tax rules that are otherwise applicable under Section 4947(a)(2) because the settlor voluntarily chose to forgo any claim to a charitable deduction, although such a deduction was otherwise allowable.

⁴ Note that Section 4947(a)(2)(A) provides that the self-dealing rules do not apply with respect to amounts payable under the terms of the trust instrument to a noncharitable beneficiary. Absent this exception, the periodic payments to the noncharitable beneficiaries of a CRT would violate the self-dealing rules and, therefore, imposition of excise tax would occur under Section 4941.

⁵ See, e.g., Ltr. Ruls. 200208039, 200912036, and 201325018.

⁶ This assumes that the noncharitable beneficiaries receiving funds upon the early termination of the CRT are “disqualified persons” under Section 4946, which most likely will be the case as, for purposes of Section 4941, a “disqualified person” includes the settlor of the trust and members of the family of the settlor. Members of a family include a spouse, ancestors, children, grandchildren, great-grandchildren, and the spouses of children, grandchildren, and great-grandchildren (Section 4946(d)).

EARLY TERMINATION OF CRUTs SUBJECT TO NET INCOME LIMITATION

Authority for Net Income Limitation

Under a standard CRUT, the amount of the payment to the noncharitable beneficiary or beneficiaries is equal to a fixed percentage of the value of the trust assets revalued on an annual basis.⁷ The payment is made even when the fiduciary accounting income of the trust is less than the fixed percentage payout amount, in which case a portion of the payment would necessarily come from the corpus of the trust. When CRTs were first being considered in the context of the Tax Reform Act of 1969, the Senate Finance Committee amended the House bill to allow distributions for CRTs to be limited to the net income of the trust, under the following rationale:

Allowing a charitable remainder trust to distribute to the income beneficiary the lesser of the trust income or the stated payout will prevent a trust from having to invade corpus when the income for a year is below that originally contemplated.⁸

The Conference Committee, without explanation, applied this income limitation only to CRUTs.⁹ In the context of CRUTs, therefore, the trust document may contain a provision limiting the distribution to the fiduciary accounting income (hereinafter “net income”) of the trust in any year in which the net income is less than the fixed percentage payout amount otherwise required to be distributed if the trust were a standard CRUT.¹⁰ As a result, the governing instrument of a CRUT (but not a CRAT) may limit annual payments to the lesser of the computed unitrust amount (equal to the specified percentage multiplied by the annual fair market value of the trust assets) or the trust’s net income as defined in Section 643(b). Such a “net income” CRUT may but is not required to provide for the excess of the unitrust amounts computed over the net income earned in the trust to be distributed when the net income of the CRUT exceeds the unitrust amount for the year. In other words, the trust may permit a make-up of the shortfall of the unitrust amounts over the net income. If the trust does not provide for the make-up, it is known as a net income CRUT or “NICRUT.” If it does provide for the make-up, it is known as a net income with make-up CRUT or “NIMCRUT.”

⁷ Reg. 1.664-3(a)(1)(i).

⁸ U.S. Code Congressional and Administrative News, 91st Cong, P.L. 91-172, S. Rep’t, p. A-477.

⁹ The other type of CRT is a charitable remainder annuity trust, often referred to as a “CRAT,” where, unlike a CRUT, a net income limitation is not permitted.

¹⁰ NICRUTs and NIMCRUTs are permitted under Section 664(d)(3). FLIP CRUTs are authorized under Reg. 1.664-3(a)(1)(i)(c).

Calculation of Charitable Deduction for CRUTs Subject to Net Income Limitation

A taxpayer who during his or her lifetime creates a “qualifying” CRT (that is one that meets the criteria of Section 664) is entitled to a gift tax charitable deduction for the value committed to charity in the trust, which must be at least ten percent (10%) when the trust is created or any additional contribution (permitted only for CRUTs that authorize additional contributions) is made. The estate of a taxpayer who creates one at death is entitled to an estate tax charitable deduction for the value of the charitable remainder interest. In addition, a taxpayer who during lifetime creates such a trust may also be entitled to an income tax deduction for the value of the charitable remainder interest.

A key factor, therefore, is the calculation for tax purposes of the value of the charitable remainder. The principles used in making the calculation are set forth in Section 7520. For gift, estate tax and income tax purposes, the calculation is the same for a standard CRUT and for a net-income CRUT. In all cases, the charitable deduction is determined based upon the assumption that the stated unitrust percentage will be paid each year to the noncharitable unitrust recipient, i.e., without regard to the net income limitation.¹¹

For charitable income tax deduction purposes, it is assumed, therefore, that notwithstanding the net income limitation, the noncharitable unitrust beneficiary will receive the entire amount of the unitrust payments as though the NICRUT or NIMCRUT were a standard CRUT. Therefore, for purposes of calculating the available charitable tax deduction, the value of the remainder interest passing to charity under a NICRUT or NIMCRUT is made without regard to the fact that the annual distributions to the noncharitable beneficiary may be limited in those years in which the net income of the trust is less than the fixed percentage payout amount otherwise required to be distributed.¹² As a result, in the case of a NICRUT and NIMCRUT, the net income limitation is disregarded and the available charitable income tax deduction for the funding of a NICRUT or NIMCRUT is, therefore, not reduced by virtue of the net income limitation, notwithstanding that such limitation may result in the charitable remainder beneficiary ultimately receiving more funds (and the noncharitable beneficiary ultimately receiving less funds) than when, as in the case of a standard CRUT, distributions are not subject to a net income limitation.¹³

¹¹ Regs. 1.664-4(a)(3) and -3(a)(1)(i)(a).

¹² Regs. 1.664-4(a)(3) and -3(a)(1)(i)(a). For charitable income tax deduction purposes, it is assumed, therefore, that notwithstanding the net income limitation, the noncharitable beneficiary will receive the entire amount of the unitrust payments as if the NICRUT or NIMCRUT were a standard CRUT.

¹³ This may also limit the charitable income tax deduction if the unitrust recipient contributes his or her net income unitrust interest to charity because the value of the contributed interest will be based, not on the unitrust payout percentage, but the rate published by the IRS to determine the value of a fiduciary income interest. See, generally, Rev. Rul. 86-60, 1986-1 CB 302.

Valuation Issues Involving Early Termination of CRUTS Subject to Net Income Limitation Where Assets Are Distributed to Noncharitable and Charitable Beneficiaries

Self-Dealing Rules under Section 4941

Because transactions with a CRUT are subject to the self-dealing rules of Section 4941,¹⁴ IRS rulings have indicated that when a CRUT is terminated early as a result of the distribution by the trustee of all of trust assets, the charitable remainder beneficiaries must receive the actuarial present value of their remainder interests, with the remaining funds paid out to the noncharitable beneficiaries of the trust holding the term interests.¹⁵ Otherwise, an act of self-dealing under Section 4941 will be considered to have occurred.

In Ltr. Rul. 200252092, for example, in the context of addressing the self-dealing issue upon the early termination of a CRUT subject to a net income limitation, the IRS stated that the “critical question is whether early termination may reasonably be expected to result in a greater allocation of the trust assets to the income beneficiary, to the detriment of the charitable beneficiary.” The IRS ruled that when the actuarial values of the shares of the income and charitable remainder beneficiary are determined using the discount rate in effect under Section 7520 on the date of termination and the methodology under Reg. 1.664-4 for valuing interests in charitable remainder trusts, “the early termination ... will not be to the detriment of the charitable beneficiary.” As a result, no act of self-dealing under Section 4941 results in such a situation upon the early termination of the trust.

IRS Historical Ruling Position Regarding Valuation of Noncharitable and Charitable Interests Upon Distribution of Trust Assets to Noncharitable and Charitable Remainder Beneficiaries

In the context of the early termination of a CRUT having a net income limitation, an issue arises as to how the net income limitation affects the valuation of the term interest when the trust terminates because of the distribution of all the trust assets to the noncharitable and charitable beneficiaries of the trust. There are several private letter rulings addressing this issue.¹⁶ Given that the payout by a CRUT having a net income limitation is limited to fiduciary

¹⁴ Section 4947(a)(2). Note that Section 4947(a)(2)(A) provides that the self-dealing rules do not apply with respect to amounts payable under the terms of the trust instrument to a noncharitable beneficiary. Absent this exception, the periodic payments to the noncharitable beneficiaries of a CRT would violate the self-dealing rules and, therefore, imposition of excise tax would occur under Section 4941.

¹⁵ See, e.g., Ltr. Ruls. 200208039, 200912036, and 201325018.

¹⁶ Ltr. Ruls. 201325018 - 201325021, 200733014, 200725044, and 200833012.

accounting income,¹⁷ special consideration must be given in determining the appropriate amount of the distribution to a noncharitable beneficiary, because an overpayment to a noncharitable beneficiary in this context, according to the IRS, will result in an act of self-dealing. The IRS rulings provide that the appropriate calculation of the actuarial value of noncharitable interests in a CRUT, considering the net income provisions, requires the use of a reasonable method for the calculation that does not inappropriately inflate the value of noncharitable interests to the detriment of the charitable remainder beneficiary. These rulings have stated that “one reasonable method to calculate the actuarial value of the income and remainder interests” upon the early termination of a NIMCRUT is to use the lesser of the stated percentage distribution rate of the NIMCRUT or the Section 7520 rate in effect for the month of termination, with the Section 7520 rate representing the deemed rate of income to be earned by the trust.

Using this approach in the current low Section 7520 rate environment has the effect of dramatically reducing the value of the term interest in a NIMCRUT, thereby resulting in a much lesser distribution to the noncharitable beneficiary upon an early termination than if the net income limitation were not considered. In Ltr. Rul. 201325021, for example, the distribution of funds to the noncharitable beneficiaries upon the early termination of a NIMCRUT, which was to occur in either March or April 2013, was based on the Section 7520 rate of 1.40% in effect for those months, substantially less than the unitrust payout percentage provided under the trust. The IRS ruled favorably on the Section 4941 self-dealing issue, stating that because of this methodology, “the income beneficiaries are not expected to receive more than they would during the full term of Trust under the above-described methodology for valuing their interests in a charitable remainder trust with a net income make-up feature.”

The IRS ruling approach to valuing the noncharitable term interest upon the early termination of a NIMCRUT directly contrasts with the valuation method required under applicable Treasury regulations for computing the charitable income tax deduction upon the creation of a NIMCRUT (or a NICRUT). These regulations, which are designed to ensure that the charitable deduction is not inflated, require the assumption that the NIMCRUT will distribute to the noncharitable beneficiary an amount based on the stated unitrust percentage distribution rate of the NIMCRUT, notwithstanding that the noncharitable beneficiary's actual distributions may be less (and charitable remainder beneficiary's payment more) due to the presence of the net fiduciary accounting income limitation.¹⁸ This ruling approach is based upon the noncharitable beneficiaries having a “potential right” to receive amounts in excess of net income, “a right that is dependent on the happening of events which are not so remote as to be negligible” and,

¹⁷ Fiduciary accounting income for charitable remainder trust and other purposes is defined in Section 643(b) and fleshed out under Reg. 1.643(b)-1, 2, with special rules for net income CRUTs. See, e.g., Reg. 1.664-3(b)(3).

¹⁸ Regs. 1.664-4(a)(3) and 1.664-3(a)(1)(i)(a).

therefore, for purposes of computing the charitable income tax deduction, the “charitable remainder interest must be minimized to reflect amounts that reasonably may be paid to the beneficiaries.”¹⁹

The IRS's valuation approach has been subject to criticism because for purposes of computing the charitable deduction upon its creation, the net income limitation is simply ignored in valuing the charitable remainder interest. In a letter to the IRS dated April 4, 2008, for example, the Committee on Estate and Gift Taxation of the New York City Bar Association urged the adoption of a “consistent approach to valuation of the income interest when the NIMCRUT is created and upon early termination protects all parties” and, accordingly, asserted that the IRS should similarly ignore the net income limitation in determining payouts to noncharitable beneficiaries upon the early termination of a NIMCRUT. The letter concludes that “we urge you to issue a published ruling confirming that the proper method for valuing the income interest and the remainder interest of a NIMCRUT that is being terminated early is the same method that is used to value those interests when a NIMCRUT is created.”²⁰ No such published ruling has ever been issued.

Propriety of Historical Valuation Approach Used By IRS in Private Letter Rulings

As indicated above, for charitable income tax purposes, the IRS ruling position assumes that, regardless of the net income limitation, the noncharitable beneficiary of a NIMCRUT or NICRUT will receive the full amount of the payments based on the stated unitrust payout percentage, thereby minimizing the charitable deduction. For self-dealing purposes, however, the ruling position assumes that only the fiduciary accounting net income (based on the Section 7520 rate in the month of termination) will be paid to the noncharitable beneficiary,²¹ thereby minimizing the payout to the noncharitable beneficiary upon the termination of the trust in a low interest rate environment.

While the valuation methods applied by the IRS upon the creation of a CRUT and its early termination upon the distribution of the trust assets are indeed inconsistent, the philosophy used in applying different methods is arguably consistent, in that the methods are, respectively, aimed at preventing an inflated charitable income tax deduction upon creation and an inflated distribution to noncharitable beneficiaries upon an early termination. Query whether a charitable remainder beneficiary, or the state attorney general or court having jurisdiction over the trust, would agree that the net income limitation should be ignored in computing the payout to a charity simply because federal tax law ignores the limitation for purposes of computing a

¹⁹ Ltr. Ruls. 201325018—201325021.

²⁰ Following the amendment to Section 664(e) made by PATH 2015, discussed below, in a letter to the IRS dated April 6, 2017, the New York State Bar Association took the same position.

²¹ This assumes that the Section 7520 rate is less than the stated unitrust payout rate in the month of termination.

settlor's charitable income tax deduction. Query too, whether a trustee, a fiduciary having a duty of loyalty to both the noncharitable and charitable beneficiaries, can apply a valuation method that, although consistent with the valuation method to calculate a charitable deduction, results in a charitable beneficiary receiving less than what it might otherwise be entitled. Therefore, state law or other constraints may prevent the trustee from making payments upon the early termination of a CRUT based on valuation method used for computing a charitable deduction.

Amendment to Section 664(e) Made by PATH 2015

Section 344 of the Protecting Americans from Tax Hikes Act of 2015 ("PATH 2015"), which was signed into law on December 18, 2015, amended Section 664(e) to add one sentence to the end of the statute. Section 344 of PATH 2015 provides as follows:

"SEC. 344. CLARIFICATION OF VALUATION RULE FOR EARLY TERMINATION OF CERTAIN CHARITABLE REMAINDER UNITRUSTS.

(a) IN GENERAL.—Section 664(e) is amended—

(1) by adding at the end the following: "In the case of the early termination of a trust which is a charitable remainder unitrust by reason of subsection (d)(3), the valuation of interests in such trust for purposes of this section shall be made under rules similar to the rules of the preceding sentence", and

(2) by striking "FOR PURPOSES OF CHARITABLE CONTRIBUTION" in the heading thereof and inserting "OF INTERESTS".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to terminations of trusts occurring after the date of the enactment of this Act."

Under Section 664(e) as amended by PATH 2015, in the case of an early termination of a CRUT subject to a net income limitation, the interests of the beneficiaries are valued using rules similar to the rules for valuing such interests for purposes of computing the charitable contribution deduction when the trust is created. In light of today's low interest rate environment, the amendment to Section 664(e) under PATH 2015, under which the net income limitation is ignored upon an early termination of a CRUT, results in a greater value being attributed to the noncharitable beneficial interest and, in turn, a lesser value attributed to the charitable remainder interest.

Example:

Suppose that a CRUT a taxpayer has created provides for her to receive the lesser of net income or a 10% annual unitrust payment. The taxpayer and the charity which is the remainder beneficiary agree to terminate the trust (and state law does not prohibit the termination) when 15 years remain for the CRUT and the CRUT has a value of \$1 million. The Section 7520 rate at the time of termination is 1.8%. Under the IRS's historical private letter ruling methodology, which generally assumes that the beneficiary will receive only the 1.80% Section 7520 rate over the remaining term of the CRUT, the value of the noncharitable unitrust interest upon termination would be equal to about \$238,000 and the value of the charitable remainder interest would be equal to about \$762,000. Under Section 664(e), as amended by PATH 2015, where the net income limitation is disregarded, and it is assumed that the taxpayer will receive the 10% unitrust payments, the value of the noncharitable unitrust interest at such time would be equal to about \$794,000 and the value of the charitable remainder interest would be about \$206,000.

Of note is that the term "early termination" is not defined under Section 664(e), as amended, so that the scope of the amendment to Section 664(e) is not clearly defined. Moreover, the application of the valuation rule contained in Section 664(e), as amended, to an early termination of a trust is, by its very terms, limited to "the valuation of interests in such trust for purposes of this section [664]." No reference is made under the amendment on its effect under the self-dealing rules of Section 4941 or whether reliance on the valuation rule contained in Section 664(e), as amended, will avoid an act of self-dealing from occurring.

Query, therefore, whether the scope of the amendment to Section 664(e) under PATH 2015 is limited only to the situation where an early termination occurs as a result of the noncharitable beneficiary contributing the entire unitrust interest to the charitable remainder beneficiary. In its explanation of PATH 2015 section 344, the Joint Committee on Taxation ("Joint Committee"), in its discussion of "Present Law," addresses the charitable deduction only upon the funding of a CRT, specifically noting that "in the case of a NICRUT or a NIMCRUT, the net-income limitation is disregarded" and "the Code does not provide a rule for valuing the interests in a charitable remainder trust in the event of an early termination of the trust."²² Under its "Explanation of Provision," the Joint Committee states only as follows:

²² Technical Explanation of the Protecting Americans from Tax Hikes Act of 2014, House Amendment #2 to the Senate Amendment to H.R. 2029, 12/17/2015, JCX-144-15.

Under the provision, in the case of the early termination of a NICRUT or NIMCRUT, the remainder interest is valued using rules similar to the rules for valuing the remainder interest of a charitable remainder trust when determining the amount of the grantor's charitable contribution deduction. In other words, the remainder interest is computed on the basis that an amount equal to five percent of the net fair market value of the trust assets (or a greater amount, if required under the terms of the trust instrument) is to be distributed each year, with any net-income limit being disregarded.

As in the case of the statute itself, the Joint Committee's explanation provides no indication of the scope of the amendment to Section 664(e) or any definition of the term "early termination" as used in the amendment. Nor does it provide any indication that Section 664(e) is intended to apply where a NICRUT or NIMCRUT terminates as a result of the trustee making a distribution of all the trust assets to the noncharitable and charitable remainder beneficiaries prior to the end of the term stated in the trust instrument.

Interestingly, the following language of the Introductory Statement to the Bill to amend Section 664(e) provides that assets are to be distributed upon the early termination of a CRT based on the same apportionment methodology used to determine the charitable deduction upon formation of the CRT, but make no reference to the situation where a net-income limitation applies which was the very focus of the amendment to Section 664(e):²³

Charitable remainder trusts present an opportunity for donors to transfer assets for the benefit of charity. Lack of certainty regarding the tax consequences of early terminations of these trusts has deterred early terminations, which has deferred the transfer of substantial assets to charity. Early terminations of charitable remainder trusts should be encouraged because they permit charities to access their share of the trust's assets earlier (and, in some instances, decades earlier) than otherwise would be the case. This is particularly compelling given that, under current economic conditions, many charities have been forced to cut back on many deserving programs. ***My bill provides that, on an early termination of a charitable remainder trust, the donor and the charity will apportion the value of the trust using the same methodology that was used to determine the value of the remainder interest on formation.*** The donor will recognize capital gain on the total value received, the charity will receive its share of the trust's assets, and the early termination will not constitute self-dealing or otherwise disqualify the charitable remainder trust. using the same methodology that was used to determine the value of the remainder interest on formation. The donor will recognize

²³ 161 Cong. Rec. 177, E1726 (Dec. 8, 2015) (Statement of Rep. Patrick J. Tiberi).

capital gain on the total value received, the charity will receive its share of the trust's assets, and the early termination will not constitute self-dealing or otherwise disqualify the charitable remainder trust. (Emphasis added.)

Termination of CRT Where Private Foundation Is Charitable Remainder Beneficiary

In Ltr. Rul. 200525014, the IRS approved the early termination of a CRT, whereby the assets of the CRT were distributed to the original donors (husband and wife) and their private foundation (as opposed to an independent public charity), which was the remainder charitable beneficiary of the CRT. Among the favorable rulings issued by the IRS was that the termination would not result in an act of self-dealing under Section 4941, an issue that arises because the donors were "disqualified persons" with respect to the private foundation.

In subsequently issued Letter Ruling 200614032, the IRS stated the following to the taxpayers:

We are revoking Private Letter Ruling 200525014, dated March 30, 2005, which addressed whether your early termination constituted an act of self-dealing under section 4941 and whether such action constituted a termination of private foundation status under section 507(a) of the Code.

The ruling states that it does not constitute an adverse letter ruling, but that taxpayers may not rely for long on Letter Ruling 200525014, an obvious indication that the IRS is reconsidering its position. The question the IRS was apparently grappling with is whether the transaction should be viewed as a sale of the income interest by the noncharitable beneficiary to the charitable remainder beneficiary for purposes of Section 4941. If it is, then the transaction would be considered an act of self-dealing. The noncharitable beneficiary is treated as having sold his interest for income tax purposes (which results in capital gain treatment) and, in those rulings that have considered the issue, the IRS has, in fact, indicated that the sale is considered as having been made to the remainder charity.

Requested Guidance Under Section 4941 of the Code Upon Early Termination of a CRT

Guidance is respectfully requested regarding the following with respect to the early termination of a CRT:

1. If the valuation method contained in Section 664(e), as amended, is applied in apportioning assets distributed between the noncharitable and charitable remainder beneficiaries upon the early termination of a CRUT subject to a net income limitation, is

the distribution to the noncharitable beneficiary based on such valuation method not considered to be an act of self-dealing under Section 4941 of the Code?

2. If upon the early termination of a CRT assets are distributed to a noncharitable beneficiary and to a private foundation as the charitable remainder beneficiary with respect to which such noncharitable beneficiary is a disqualified person, does an act of self-dealing occur under Section 4941 of the Code?

I appreciate the opportunity to submit my suggestions for issues that should be included on the 2018-2019 Priority Guidance Plan. Thank you in advance for your time and consideration. Please do not hesitate to contact me if you have any questions regarding our comments or if I can be of further assistance.

Very truly yours,



Richard L. Fox