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This letter responds your request for a private letter ruling that, for federal income tax purposes, you will not be treated as selling to Z shares of X stock that you contributed and will contribute to Y that Z may purchase from Y.

FACTS:

You own b shares of X voting common stock individually and through a grantor trust of which you are the grantor-owner. In addition, members of your family own, directly or indirectly, another c shares of X voting common stock. Together these shares equal less than d percent of the voting common stock of X. X is a holding company that has only one class of stock and owns all of the stock of its sole subsidiary, W. You are one of e members of the board of directors of X and one of f members of the board of directors of W. None of the other directors is related to you.

You plan to establish a donor-advised fund ("Fund") within the meaning of § 4966(d)(2) of the Internal Revenue Code. The Fund will be a separately identified perpetual fund within Y, an organization described in § 170(c)(2). Your attorney and members of your family will serve as advisors to the Fund. The advisors may make suggestions concerning grants that Y will make from the Fund for charitable purposes. Although Y must take these suggestions into account, Y is not bound by the advisors' suggestions and may reject them or accept them in whole or in part in its absolute discretion.

You are also the trustee of Z. As trustee, you will hold Z's assets for your spouse during her lifetime. The trustee will hold Z's assets for your benefit for your lifetime if your spouse predeceases you. Upon the death of you and your spouse, Z's assets will be distributed your children. Z does not own stock in X.

Under the terms of the Fund, you contributed h out of g shares of X voting common stock that you own individually, to Y in Year 1, and plan to contribute the remaining shares in the two subsequent years.

The policy of Y requires that its investments be diversified. Thus, Y has indicated that it may sell shares of closely held corporations that it receives as contributions. Regarding the shares of X that you contribute to Y under the terms of the Fund, Y will seek the names of prospective buyers for those shares from you and other sources. Z may purchase a portion of the shares if Y offers them for sale. You represent that none of the individuals who will purchase the remaining shares are related to you.

You represent that your contributions of g shares of X voting common stock to Y under the terms of the Fund are not subject to any condition or legally binding obligation requiring Y to sell the shares, or offer them for sale. The contributed shares will not be subject to any option or right by any person to acquire them from Y. Y has the sole discretion regarding whether or when to sell the contributed shares and to whom those

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shares may be sold. Further, you will not retain any rights or interest in the contributed shares.

LAW AND ANALYSIS:

Section 61 provides that gross income includes all income from whatever source derived, except as otherwise excluded in subtitle A.

Under the anticipatory assignment of income doctrine, a mere transfer which is in form a gift of appreciated property may be disregarded for tax purposes if its substance is an assignment of a right to income. *Rauenhorst v. Commissioner*, 119 T.C. 157, 164 (2002). By contrast, the mere anticipation or expectation of the receipt of income is insufficient to conclude that a fixed right to income exists. *S.C. Johnson & Son, Inc. v. Commissioner*, 63 T.C. 778, 787-788 (1975).

In *Palmer v. Commissioner*, 62 T.C. 684 (1974), *aff'd on other grounds*, 523 F.2d 1308 (8th Cir. 1975), *acq.*, 1978-1 C.B. 2, the Tax Court held that a taxpayer's gift of stock in a closely held corporation to a private foundation, followed by a redemption, was not to be recharacterized as a sale or redemption between the taxpayer and the corporation followed by a gift of the redemption proceeds to the foundation, even though the taxpayer held voting control over both the corporation and the foundation. The Tax Court based its opinion, in part, on the fact that the foundation was not legally obligated to redeem the stock at the time it received title to the shares.

In Rev. Rul. 78-197, 1978-1 C.B. 83, the Internal Revenue 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.

You retain no rights or interest in the g shares that you have contributed and will contribute to the Fund. At the time you contribute the shares to Y under the terms of the Fund, Y will not be under any legal obligation to sell the shares. Y has the sole discretion to decide whether or when to sell the contributed shares, and cannot be compelled by you or any other individuals to sell them.

HOLDING:

Based on each of the representations submitted and the information described above, we conclude that, for federal income tax purposes, you will not be treated as selling to Z the g shares of X stock that you contributed to Y in Year 1 and will contribute to Y in the two succeeding years that Z may purchase from Y.

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CAVEATS

Except as expressly provided in the immediately preceding paragraph, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. This letter ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent. Enclosed is a copy of the letter showing the deletions proposed to be made when it is disclosed under § 6110.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

You must attach a copy of this letter to any tax return to which it is relevant. If you file your tax return electronically you must attach a statement to the return that provides the date and control number of this letter ruling.

In accordance with the Power of Attorney and Declaration of Representative on file in this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Michael J. Montemurro
Branch Chief
Office of Associate Chief Counsel
(Income Tax and Accounting)