Office of Chief Counsel
Internal Revenue Service

Memorandum

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to:

from:

subject:

This Chief Counsel Advice responds to your memorandum dated June 12, 2003. In accordance with I.R.C. 6110(k)(3), Chief Counsel Advice may not be used or cited as precedent. Moreover, this memorandum constitutes field service advice and therefore it is not binding on Examination or Appeals and is not a final case determination.

LEGEND

CORPORATION =
BUSINESS =
Individual 1 =
Individual 2 =
Trust 1 =
Trust 2 =
Trust 3 =
Voting Trust =
Year 1 =
Year 2 =
Year 3 =
Year 4 =
a =
b =
c =

d	=
e	=
f	=
g	=
h	=
i	=
j	=
k	=
l	=
m	=
aa	=
bb	=
cc	=
dd	=
ee	=
ff	=
gg	=
hh	=
ii	=
jj	=
kk	=
ll	=
mm	=
nn	=
oo	=
pp	=
qq	=
rr	=

I. ISSUE

Whether certain redemptions of stock (made in order to pay the tax owed on a prior gift of stock) should be treated as not essentially equivalent to dividends or as sales or exchanges under section 302(b)(1) of the Internal Revenue Code.

II. FACTS

CORPORATION, a large family-owned company engaged in BUSINESS, has 2 classes of stock outstanding: voting Class A Common and nonvoting Class B Common. Its shareholders are: (1) Individuals 1 and 2 (father and mother, hereinafter collectively referred to as the "Taxpayers"); (2) Trust 1, Trust 2 and Trust 3 (collectively referred to herein as the "Children's Trusts");[1] (3) Individual 1's siblings and their issue (hereinafter

[1] All 3 trusts were established at various times for the benefit of the Taxpayers' children.

referred to as "Shareholder Family"); and (4) certain management employees and members of CORPORATION's board of directors.

In Year 1, CORPORATION's board of directors became concerned that the deaths of the Taxpayers would cause CORPORATION to either partially liquidate or go public in order to pay the large estate tax that would be due. To protect the company, the Taxpayers began to make large gifts of shares of their Class A Common stock to the Children's Trusts, which then transferred the gifted stock to a newly-formed Voting Trust. In Year 2, the Taxpayers made a gift of *a* shares of Class A Common stock to the Children's Trusts. In Year 3, the Taxpayers caused CORPORATION to redeem approximately *b* shares of their Class A Common stock to pay for the gift tax on this transfer. In Year 4, the Taxpayers caused CORPORATION to redeem an additional *c* shares of Class A Common stock to pay for the income tax due on the Year 3 redemption. Initially, the Taxpayers treated the redemptions as dividends but later amended their Year 3 and Year 4 returns treating the redemptions as sales and exchanges and requested refunds. The request was denied and the case is now before an Appeals officer.

Prior to the Year 2 gift, Taxpayers held a majority (*d* shares) of the voting Class A Common stock and *e* shares of the nonvoting Class B Common stock of CORPORATION, representing *aa*% of the voting Class A and *bb*% of the Nonvoting Class B stock. The Children's Trusts held *f* shares of the voting Class A Common stock and no shares of nonvoting Class B Common stock and the Shareholder Family held *g* shares of nonvoting Class B Common stock and the Management and Board held *h* of nonvoting Class B Common stock of CORPORATION. Neither the Shareholder Family nor the Management and Board held any voting stock in CORPORATION.

Following the Year 4 redemption, the Taxpayers held i shares of voting Class A Common stock and j shares of nonvoting Class B Common stock, representing *cc*% of the Voting Class A and *dd*% of the nonvoting Class B Common stock. The Voting Trust held *k* shares of the voting Class A Common stock and no shares of nonvoting Class B Common stock. The Shareholder Family held *l* shares of nonvoting Class B Common stock and the Management and Board held *m* of nonvoting Class B Common stock. (Note that the Shareholder Family and the Management and Board each held less stock in CORPORATION immediately after the Year 4 redemption than they held immediately before the Year 2 gift transfer).

The trustees of the Voting Trust are certain members of the Corporate Governance Committee[2] of the board of directors of CORPORATION.[3] No member of the

[2] CORPORATION's Corporate Governance Committee (CGC) nominates the members of CORPORATION's board of directors. The CGC has a minimum of 4 and a maximum of 5 members, which includes 1 member of the Taxpayers' family and 4 At Large directors (one of which can be Individual 1, but only if he is not the President of CORPORATION).

Taxpayers' family is eligible to serve as a trustee of the Voting Trust. The Voting Trust Trustees hold the legal title to the voting Class A Common stock in the corpus of the Voting Trust, but the Children's Trusts remain the beneficial owners of that stock. The Voting Trust Trustees have all the rights of shareholders, except that they must vote for the following persons as directors of CORPORATION:

(1) Individual 2;
(2) a second member of the Taxpayers' family, but only if the CGC determines that another family member may serve in addition to Individual 2;
(3) the President of CORPORATION (*importantly*, the President is Individual 1);
(4) Individual 1, but only if he is not the President; and
(5) up to 7 individuals who are not members of the Taxpayers' family.

The Trust Certificate Holders (i.e., the Children's Trusts) have the right to receive any dividends paid on the shares of voting Class A Common stock held in the Voting Trust. They do not have any power to initiate or cause CORPORATION to engage in Major Transactions (only CORPORATION's board of directors have that power), but they can veto a vote of the Voting Trust Trustees, if the trustees vote in favor of a Major Transaction. A "Major Transaction" is defined as:

(1) an initial public offering ("IPO") of CORPORATION's stock;
(2) any transaction that results in less than 40% of CORPORATION stock being held by the members of the Taxpayers' family or more than 40% of the outstanding shares of voting Class A Common stock being held by nonfamily members;
(3) sale of all or substantially all of CORPORATION's assets; and
(4) dissolution or liquidation of CORPORATION.

The Voting Trust will terminate upon the occurrence of any of the following events:

(1) any closing of any Major Transaction, except an IPO of shares of CORPORATION's stock; or
(2) unanimous vote of the Voting Trust Trustees or an 80% vote of the Trust Certificate Holders to terminate the trust if the book value of CORPORATION plus any distribution is less than two thirds of CORPORATION's book value as of the end of any five preceding fiscal years.

III. TAXPAYERS' POSITION

The Taxpayers argue that the redemptions should be treated as sales or exchanges under section 302(b)(1) for the following reasons. The Taxpayers argue that under United States v. Davis, 397 U.S. 301 (1970), a redemption must result in a meaningful

[3] The board of directors of CORPORATION consists of 8, but can be as many as 11, members. Five directors constitute a quorum. If a quorum is attained, then an affirmative vote of the majority present constitutes an act of the board.

reduction of the shareholder's proportionate interest in the corporation in order to avoid dividend equivalency under section 302(b)(1) of the Code. The Taxpayers further contend that this determination is made by considering the reduction in their stock interest caused by both the Year 2 gift and the Year 3 and Year 4 redemptions because they were made under a "firm and fixed plan." The Taxpayers posit that there is no direct authority on the treatment of the transfer of shares to a voting trust in the context of section 302(b)(1). The Taxpayers indicate that the authorities that exist provide that a determination whether the redeeming shareholder exerts voting control over the shares transferred must be made based on all the facts and circumstances. As an alternative argument, the Taxpayers argue that the transfer of the voting stock to the Voting Trust should be viewed as converting the voting stock to nonvoting stock.

IV. LAW AND ANALYSIS

FIRM AND FIXED PLAN

In determining whether a redemption qualifies for exchange treatment under one of the tests set forth in section 302(b) of the Code, the Service and the Courts aggregate and treat as one transaction several separate but related transactions that are taken pursuant to a firm and fixed plan. See Rev. Rul. 55-745, 1955-2 C.B. 223 (separate transactions treated as one in determining section 302(b)(3) issue); Rev. Rul. 75-447, 1975-2 C.B. 113 (separate transactions treated as one in determining section 302(b)(2) issue); Rev. Rul. 84-114, 1984-2 C.B. 90 (separate transactions treated as one in determining whether there was a "meaningful reduction" of a shareholder's interest in the corporation for purposes of section 356). See also Blount v. Commissioner, 425 F.2d 921 (2d Cir. 1969) (separate transactions which are parts of a single plan are considered together in applying the dividend equivalency test of section 302(b)(1)); Neidermeyer v. Commissioner, 62 T.C. 280 (1974), aff'd, 535 F.2d 500 (9th Cir. 1976) (separate transactions treated as one in determining section 302(b)(3) issue); Johnston v. Commissioner, 77 T.C. 679 (1981) (separate transactions treated as one in determining section 302(b)(1) issue).

The Taxpayers argue that in determining whether certain transactions are parts of a firm and fixed plan, the courts apply the following test: the firm and fixed plan should (i) be communicated to all interested parties, (ii) impose obligations on the parties to fulfill the plan and (iii) be in writing (although this is not an absolute requirement). Bleily & Collishaw, Inc. v. Commissioner, 72 T.C. 751, aff'd 647 F.2d 169 (9th Cir. 1981). The Taxpayers argue that the Year 2 gift and the Year 3 and Year 4 redemptions are clearly parts of a firm and fixed plan because the transactions meet all the requirements of the test.

From the information we have reviewed, we agree with the Taxpayers that it was clearly their intention that both the Year 2 gift of stock and the Years 3 and 4 redemptions be parts of a single plan to transfer control of the company to the Taxpayers' children.

Therefore, we conclude that the gift and the redemptions were parts of a firm and fixed plan and therefore should be aggregated and treated as one transaction.

NO DIRECT AUTHORITY ON TRANSFERS TO VOTING TRUSTS

The Taxpayers argue that voting control is determinative in the application of the dividend equivalency test. For example, in Rev. Rul. 85-106, 1985-2 C.B. 116, a redemption was treated as equivalent to a dividend. In the ruling, although the redemption substantially reduced the redeemer's dividend and liquidation rights, it did not reduce the taxpayer's right to control the corporation (i.e., he could still control the corporation by acting in concert with 2 other shareholders). Relying on "control" as the key factor in determining dividend equivalence, the Taxpayers here argue that the transfer of their voting stock to the Voting Trust reduced their constructive "control" interest in CORPORATION from ee[4] to *cc*%, well within the reduction envisioned by Code section 302(b)(1) and Davis.

In further support of their contention that they no longer control CORPORATION, the Taxpayers argue that the Voting Trust provides elaborate corporate governance rules under which outside trustees permanently control the voting power of the stock. The Taxpayers contend that because the trustees are sophisticated business leaders and due to their fiduciary duties, these trustees are unlikely to be influenced by the Taxpayers. Moreover, there is no evidence that the Voting Trust Trustees are or would be subject to undue influence by the Taxpayers and, thus, would fail in their fiduciary duties.

Rev. Rul. 71-262, 1971-1 C.B. 110, holds that the holder of a voting trust certificate (the beneficiary of the voting trust) and not the trustee of the voting trust was the owner of the shares for purposes of section 302 of the Code. This ruling appears to be a stumbling block to the Taxpayers. Nonetheless, the Taxpayers attempt to distinguish the ruling. They argue that it involved a transaction tested only under section 302(b)(3). The Taxpayers note that the Service has expanded the application of the ruling to section 302(b)(2) transactions but has not applied it to section 302(b)(1) transactions. Taxpayers argue that the expansion of the ruling to section 302(b)(1) transactions is unwarranted because the test under section 302(b)(1) is a facts and circumstances test, which is unlike the mechanical tests of sections 302(b)(2) and (b)(3).

We agree with the Taxpayers' assertion that "control" is a key factor in determining whether there has been a meaningful reduction of a shareholder's proportionate interest

[4] We take issue with the Taxpayers' assertion that they owned *ee*% of the voting stock immediately prior to the Year 2 transfer of *a* shares to the Children's Trusts. Taxpayers' own chart shows *ee*% owned directly **and** *pp*% percent owned by attribution. Furthermore, Taxpayers fail to account for the *qq*% of the voting stock owned by the Shareholder Family, which appears to have been redeemed sometime prior to the Year 2 gift transfer. By our calculations, the Taxpayers owned directly and by attribution 100% of the voting stock immediately prior to the Year 2 gift transfer.

in a corporation for purposes of section 302(b)(1) of the Code. See Rev. Rul. 85-106, 1985-2 CB 116. Nonetheless, we do not agree with the Taxpayers' argument that the transfer of their voting stock to the Children's Trusts and the subsequent retransfer to the Voting Trust reduced their voting control in CORPORATION from *ee*% to *cc*%. Instead, we conclude that the transfers to the Voting Trust did not reduce their voting control in CORPORATION at all.

The Taxpayers' assertion (i.e., the dividend equivalency test differs from the mechanical ownership tests of Code sections 302(b)(2) and (b)(3) because the dividend equivalency test is a facts and circumstances determination of the redeemer's loss of ownership rights and control power whereas the mechanical ownership tests measure ownership percentage before and after the redemption and therefore require a bright-line rule as to who is the owner of particular shares) is reminiscent of the taxpayer's argument in Davis. See Davis, 397 U.S. at 306. There, the taxpayer, in asserting that section 318 does not apply to determinations under section 302(b)(1), argued "the result under [section 302(b)(1)] should be different because there is no explicit reference to stock ownership as there is in paragraphs (2) and (3)." 397 U.S. at 306. The U.S. Supreme Court rejected this argument, stating that the attribution rules of section 318(a) are applicable to the entire section 302, including (b)(1). 397 U.S. at 306-07. The Court went on to state,

> [T]he attribution rules of section 318(a) do apply; and, for the purposes of deciding whether a distribution is "not essentially equivalent to a dividend" under section 302(b)(1), taxpayer must be *deemed the owner* of all 1,000 shares of the company's common stock.

397 U.S. at 307 (emphasis added). In so holding, the Court merely reinforced the notion that *ownership* of voting stock is central to a section 302(b)(1) determination.

Here, the thrust of the Taxpayers' main argument is that applying a mechanical approach to determine dividend equivalency is anathema to the "facts and circumstances" approach of section 302(b)(1) of the Code. We disagree and note that the Supreme Court in Davis applied the *mechanical rules of section 318* to determine that the taxpayer did not experience a meaningful reduction in his proportionate interest in the corporation as a result of the redemption of his stock. 397 U.S. at 307.

Applying both the mechanical rules of section 318(a) and the Supreme Court's reasoning to the case here, we conclude that the Taxpayers "must be deemed" the owners of all the shares of the voting Class A Common stock held by the Voting Trust. The Children's Trusts constructively own the Class A Common stock, including the voting attributes of that stock, and thus the control inherent in the stock held by the Voting Trust is attributed to the Children's Trusts. Section 318(a)(2)(B) of the Code. As beneficiaries of the Children's Trusts, the Taxpayers' children constructively own the Class A Common stock (and voting rights) that the Children's Trusts are deemed to own. Id. The Taxpayers constructively own the Class A Common stock (and voting rights) constructively owned by their children. Section 318(a)(1)(A) of the Code. Accordingly, the Taxpayers' control of CORPORATION, both directly and by attribution, is 100% both before and after the transfer to the Voting Trust.[5]

Having established that (1) ownership is central to any Code section 302(b)(1) determination, (2) the attribution rules of section 318 apply to section 302(b)(1) determinations, and (3) the Taxpayers constructively own the voting Class A Common stock held in the Voting Trust, the only way the Taxpayers can hereinafter prevail is if the application of the attribution rules of section 318 were somehow barred or mitigated in this instance. They are not. The Service's position is that there are no exceptions to the application of the attribution rules of section 318(a) in the context of Section 302(b) determinations, other than section 318(a)(5)(B) and (C) and section 302(c)(2). We note that in one post-Davis case, the First Circuit Court of Appeals concluded that family hostility is a factor mitigating the constructive ownership rules of section 318(a) in determining dividend equivalency under § 302(b)(1). Robin Haft Trust v. Commissioner, 510 F.2d 43, 47-48 (1st Cir. 1975). We further note, however, that the Service has stated that it will not follow the First Circuit's decision in Robin Haft Trust. Rev. Rul. 80-26, 1980-1 C.B. 67; Estate of Squier v. Commissioner, 35 T.C. 950 (1961) (nonacq.). The Tax Court and the Fifth Circuit Court of Appeals have also refused to follow Robin Haft Trust. Cerone v. Commissioner, 87 T.C. 1 (1986) (contra to Robin Haft Trust); Metzger Trust v. Commissioner, 693 F.2d 459 (5th Cir. 1982) (contra to Robin Haft Trust), cert. denied, 463 U.S. 1207 (1983).

Regarding the Taxpayers' argument that it would be inappropriate to apply the holding of Rev. Rul. 71-262 to determinations under section 302(b)(1) of the Code, we note that the language of the ruling does not limit its application only to sections 302(b)(2) and (b)(3) transactions. The language provides, "The holder of a voting trust certificate is the owner of his shares of stock held by a voting trust and is the redeeming shareholder *for purposes of section 302* of the Code." (Emphasis added). Thus, the literal language of the ruling clearly manifests that it applies to all section 302 determinations, including determinations made under section 302(b)(1). Moreover, determinations under sections

[5] We note that the Taxpayers would most likely concede that they constructively own the stock in the Voting Trust, but would nonetheless argue that the terms of the Voting Trust indenture effectively cut off the voting attributes from the underlying stock. Thus, they constructively own the stock but not the voting attributes. We disagree. We conclude that, although the words "control" and "ownership" are not synonymous, nonetheless ownership *is* control; likewise, beneficial ownership *is* control. If you own it, you control it.

302(b)(1), (b)(2) and (b)(3) are made with the same purpose: whether the transaction should be treated as a sale or exchange or should be accorded dividend treatment. Thus, we see no reason why the ruling should not be extended to the current case.

TRANSFER TO TRUST CAUSES THE VOTING STOCK TO BECOME NONVOTING STOCK

Alternatively, the Taxpayers argue that the Voting Trust effectively transmogrifies the voting Class A Common stock to nonvoting Class A Common stock. If the Taxpayers are right (they are not), then the only voting stock outstanding is the *cc*% held by them directly. Following the "logic train" of Taxpayers' argument, immediately prior to the transfer all shares of voting Class A Common stock held by the Children's Trusts to the Voting Trust, the Taxpayers owned 100% of voting Class A stock outstanding (*cc*% directly and *rr*% by attribution). Immediately after the transfer, the Taxpayers owned 100% of voting Class A Common stock (100% directly and zero by attribution). We fail to see how this argument helps the Taxpayers.

Moreover, although the Taxpayers cite no authorities in the section 302 context, they do cite to several analogous authorities in support of their argument that the transfer to the Voting Trust converts the voting stock to nonvoting stock. They cite to Rev. Rul. 72-72, 1972-1 C.B. 104 and argue that the ruling stands for the proposition that stock placed in a voting trust for five years with no power by the beneficiary to remove the stock was not voting stock in the hands of the acquirer of such stock.[6] Taxpayers also cite to Alumax v. Commissioner, 165 F.2d 822 (11th Cir. 1999) (taxpayers did not have 80% voting control of its subsidiary for purposes of section 1504 because the corporation's certificate of incorporation conferred veto power to minority shareholders on matters traditionally decided by a majority vote of the board), and Framatome Connectors USA, Inc. v. Commissioner, 118 T.C. 32 (2002) (denial of CFC status because significant powers granted to minority non-U.S. shareholders).

After reviewing the rulings and cases cited by the Taxpayers, we nonetheless disagree with their conclusions. As stated above, we believe that Rev. Rul. 71-262 stands for the proposition that the holder of a voting trust certificate is the owner of his shares of stock (as well as all their attributes) held by a voting trust for Code section 302 purposes. More importantly, by its terms, the definition of control for section 302 purposes is more expansive than in the other areas (e.g., sections 368, 1504) cited by the taxpayer. In enacting section 302, Congress was concerned that taxpayers could easily avoid its mandate by making transfers to related parties while retaining effective control of the

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[6] We note that Rev. Rul. 72-72 does not itself mention a voting trust. It does provide, however, that the seller of the voting stock entered into an arrangement with the purchasers whereby he would retain an irrevocable right for 5 years to vote the stock. The voting restriction was printed on the stock certificates issued to the purchasers. The Service ruled that for purposes of Section 368(a)(1)(B) of the Code, the arrangement effectively was an issuance of nonvoting stock that automatically converted to voting stock at the end of 5 years.

corporation. Thus, Congress made application of the attribution rules of section 318 mandatory to section 302 determinations. This was an important signal that transfers made to related parties are suspect and this explains the holding of Rev. Rul. 71-262. In the reorganization area, section 318 is inapplicable. Thus, control for reorganization purposes is determined solely based on what the holder owns. In certain circumstances, if the holder of stock does not hold the vote associated with the stock, such stock is not treated as voting stock. See Rev. Rul. 72-72. The rule of Rev. Rul. 72-72, however, is not extended to all situations. For example, in Rev. Rul. 75-95, 1975-1 C.B. 114, two shareholders are treated as the owners of stock for purposes of determining whether the continuity-of-interest requirement of Treas. Reg. Section 1.368-1 is met even though they transferred the voting rights associated with the stock to a voting trust. Rev. Rul. 75-95 seems to apply the section 318 attribution concept in the context of Section 368 determination.

From the authorities cited by the Taxpayers and the authorities we have found, the conclusion seems to be that voting stock remains voting stock even if the voting rights to the stock are transferred to a party related to the shareholder. See Rev. Rul. 71-262 and Rev. Rul. 75-95. If, however, there is true alienation of the voting attributes, the voting stock may be treated as nonvoting stock. See Rev. Rul. 72-72, Alumax, and Framatone Connectors USA, Inc., supra. In the current case, the transfer of the stock rights was made to a related party (i.e., a trust, albeit a voting trust). Therefore, we conclude that the transfer does not cause the voting stock to become nonvoting.

Additionally, in determining whether the Taxpayers experienced a "meaningful reduction" of their proportionate interest in CORPORATION, we must not look only at the number of shares *the Taxpayers* had redeemed, but we must also take into account redemptions of stock held by *other* shareholders (those whose shares are not attributable to the Taxpayers) during the same period. We do this in order to compare the Taxpayers' *proportionate* interest in CORPORATION at the beginning of this period to the Taxpayers' *proportionate* interest in CORPORATION at the end of the period.

During the period from the day immediately prior to the Year 2 gift transfer to the day after the Year 4 redemption, the other shareholders experienced a drop in their proportionate stock interest in CORPORATION, from *ff*% to *gg*%. Compare that with the Taxpayers, who during this same period, experienced an increase in their proportionate stock interest (both direct and by attribution) in CORPORATION from *hh*% of the total Corporation stock outstanding (both voting and nonvoting) to *ii*%. Thus, despite a transfer and two redemptions of their proportionate interest of the voting stock, the Taxpayers' actual *proportionate* interest in the total stock of CORPORATION (both voting and nonvoting) increased.[7] See Robin Haft Trust v. Commissioner, 61 T.C. 398

[7] Immediately before the Year 2, the Taxpayers directly owned *jj*% of CORPORATION's total stock outstanding and, by attribution, the stock owned by their children (*kk*%) and the Children's Trusts (*ll*%). Thus, they owned directly and constructively *hh*% (*jj*% + *kk*% + *ll*% = *hh*%) of CORPORATION's total stock outstanding. Immediately after the Year 4 redemption, the Taxpayers directly owned *mm*% of

(1973), remanded 510 F.2d 43 (1st Cir. 1975), supplemental opinion 62 T.C. 145 (1974) (imposing dividend treatment where percentage ownership increased from 31.67 percent to 33.33 percent after attribution rules were applied due to concurrent redemptions from other shareholders); see also Sawelson v. Commissioner, 61 T.C. 109 (1973) (imposing dividend treatment where interest increased after a redemption from 83.4 percent to 93.4 percent).

Moreover, these same facts show the Taxpayers experienced, as a result of the redemptions, an increase in two of the three Himmel[8] factors – (1) the right to participate in CORPORATION's current earnings and accumulated surplus, and (2) the right to share in the net assets on CORPORATION's liquidation. In Rev. Rul. 75-502, 1975-2 C.B. 111, to determine what constitutes a meaningful reduction of interest for purposes of section 302(b)(1) of the Code, the Service defined the shareholder's interest in a corporation to be (1) the right to vote and thereby exercise control; (2) the right to participate in current earnings and accumulated surplus; and (3) the right to share in net assets on liquidation).

Accordingly, under a facts and circumstances test of section 302(b)(1) of the Code, the Taxpayers cannot be said to have experienced a meaningful reduction of their proportionate interest in CORPORATION.

V. CONCLUSION

The Year 3 and Year 4 redemptions to pay the gift tax on the Year 2 gift should be treated as essentially equivalent to dividends under section 302 because the Taxpayers did not experience a meaningful reduction in their proportionate interests in CORPORATION. Their ownership (direct and by attribution) of the voting Class A Common stock immediately before the Year 2 gift transfer was 100%; their ownership (direct and by attribution) of the voting Class A Common stock immediately after the Year 4 redemption likewise was 100%.

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Please call or at , if you have any further questions.

CORPORATION's total stock outstanding and, by attribution, the stock owned by their children (*nn*%) and the Children's Trusts (*oo*%). Thus, they owned directly and constructively *ii* (*dd*% + *nn*% + *oo*% = *ii*%) of CORPORATION's total stock outstanding. Note that all the stock held by the Voting Trust is attributable to the Taxpayers under Code section 318, even assuming the Voting Trust affects a relinquishment of the "voting" attributes of stock ownership.

[8] Reference to the factors set forth in Himmel v. Commissioner, 338 F.2d 815 (2d Cir. 1964).