

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:Br4-PLR-142734-01
Date:

October 05, 2001

In Re:

Legend

Decedent =
Son =
Trust =

Charitable Trust A =
Charitable Trust B =

Executor =
Co-Trustees =
State =
Date 1 =
Date 2 =
Date 3 =
Date 4 =

Dear :

This is in reply to your letter of August 8, 2001, requesting a ruling that the reformation of Trust was a qualified reformation for purposes of section 2055(e)(3) of the Internal Revenue Code, and that the present value of the remainder interest in the Trust as reformed will qualify for a Federal estate tax charitable deduction under section 2055(a).

FACTS

Decedent died testate a resident of State on Date 1. Under the terms of Decedent's will executed on Date 2, as amended by codicil on Date 3, after certain specific bequests, the residue of the estate passed to Trust, a revocable inter vivos trust established by Decedent that became irrevocable on Decedent's death. Section II of the Trust agreement directs that after Decedent's death the Co-Trustees are to pay the net income from the trust corpus to Son not less frequently than quarter-annually. The Trust agreement does not give Co-Trustees the authority to invade the principal of the Trust for the benefit of Son or any other beneficiary. On the death of Son, the Trust

corpus is to be divided into two equal shares. One share is to be held in Charitable Trust A. The Trustee is directed to apply the net income and corpus of Charitable Trust A exclusively for a specified charitable purpose described in section 2055(a). The other share is to be held in Charitable Trust B. The corpus and income of Charitable Trust B is to be used exclusively for another specified charitable purpose described in section 2055(a).

On Date 4, within nine months of Decedent's death, the Executor and Co-Trustees petitioned the local probate court for an order reforming the Trust into a charitable remainder unitrust described section 664(d)(2). The court granted the petition in an order dated July 26, 2001. Under the provisions of the Trust, as reformed, the Co-Trustees will pay to Son a unitrust amount equal to 7.6% of the net fair market value of the assets of the Trust as of the first day of each taxable year of the Trust. Any Trust income in excess of the unitrust amount shall be added to principal. Upon the death of Son, the Trust corpus will be divided into two equal shares to be held by Charitable Trust A and Charitable Trust B, as described above. In the event that either charitable trust is not a qualifying charitable organization under sections 170(c) and 2055(a) of the Code, the Co-Trustees are directed to pay the remainder shares to charitable organizations qualifying under sections 170(c) and 2055(a).

Son was aged 58 on Date 1, the date of Decedent's death.

LAW AND ANALYSIS

Section 2055(a) of the Code provides in part that, for estate tax purposes, the value of the taxable estate shall be determined by deducting from the value of the gross estate the amount of all bequests, legacies, devises, or transfers to or for the use of any corporation organized and operated exclusively for religious, charitable, educational and certain other purposes.

Section 2055(e)(2) of the Code disallows the estate tax charitable deduction where an interest in property (other than an interest described in section 170(f)(3)(B)) passes or has passed from the decedent to a person, or for a use, described in section 2055(a), and an interest (other than an interest which has extinguished upon the decedent's death) in the same property passes or has passed for less than adequate and full consideration in money or money's worth from the decedent to a person, or for a use, not described in section 2055(a), unless—

(A) in the case of a remainder interest, such interest is in a trust which is a charitable remainder annuity trust or a charitable remainder unitrust (described in section 664) or a pooled income fund (described in section 642(c)(5)).

(B) in the case of any other interest, such interest is in the form of a guaranteed annuity or is a fixed percentage distributed yearly of the fair market value of the property (to be determined annually).

Section 2055(e)(3)(A) provides that a deduction shall be allowed under section 2055(a) in respect of any “qualified reformation.” Section 2055(e)(3)(B) provides that the term “qualified reformation” means a change of a governing instrument by reformation, amendment, construction, or otherwise which changes a reformable interest into a qualified interest, but only if—

- (i) any difference between (a) the actuarial value of the qualified interest determined as of the date of decedent’s death, and (b) the actuarial value (as so determined) of the reformable interest, does not exceed 5 percent of the actuarial value (as so determined) of the reformable interest,
- (ii) in the case of (a) a charitable remainder interest, the nonremainder interest (before and after the qualified reformation) terminates at the same time, or (b) any other interest, the reformable interest and the qualified interest are for the same period, and
- (iii) such changes are effective as of the date of the decedent’s death.

Section 2055(e)(3)(C)(i) defines the term “reformable interest” to mean any interest for which a deduction would be allowable under section 2055(a) at the time of the decedent’s death but for section 2055(e)(2).

Section 2055(e)(3)(C)(ii) provides that the term “reformable interests” does not include any interest unless, before the remainder vests in possession, all payments to persons other than an organization described in section 2055(a) are expressed either in a specified dollar amount or a fixed percentage of the fair market value of the property. Section 2055(e)(3)(C)(iii)(I) provides, however, that section 2055(e)(3)(C)(ii) shall not apply to any interest if a judicial proceeding is commenced to change such interest into a qualified interest not later than the 90th day after the last date (including extensions) for filing an estate tax return, if an estate tax return is required to be filed.

Section 2055(e)(3)(D) defines a “qualified interest” as an interest for which a deduction is allowable under section 2055(a).

In this case, the remainder interest in the Trust was a reformable interest under section 2055(e)(3)(C)(i). An estate tax deduction would have been allowable under section 2055(a) for the value of the interest, but for the requirements of section 2055(e)(2). The interest passing to Son was not expressed in terms of either a specified dollar amount or a fixed percentage of the fair market value of the property as required by 2055 (e)(3)(C)(ii). However, that requirement is not applicable under section 2055(e)(3)(C)(iii)(I), since the reformation proceeding was commenced within the time prescribed by that section. Accordingly, the charitable remainder interest provided for in Trust constitutes a reformable interest under section 2055(e)(3)(C)(i).

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Furthermore, the reformation was a qualified reformation under section 2055(e)(3)(B). The governing instrument of the Trust, as reformed, contains provisions set forth in Rev. Rul. 72-395, 1972-2 C.B. 340, as modified by Rev. Rul. 92-57 1992-2 C.B. 123. Therefore, we conclude that the governing instrument of the Trust, as reformed, meets the requirements of a charitable remainder unitrust under section 664, and will qualify for a deduction under section 2055(a). Accordingly, the remainder interest in Trust as reformed, will be a qualified interest.

In addition, based on the discount rate under section 7520 of the Code applicable for the month of Decedent's death, the actuarial value of the charitable remainder as reformed will not differ by more than five percent from the actuarial value of the charitable remainder interest prior to reformation. The pre-reformation and post-reformation non-charitable interests will terminate at the same time, the date of Son's death. Finally, the reformation will be effective as of the Decedent's date of death.

CONCLUSION

Accordingly, we rule that the reformation was a qualified reformation within the meaning of section 2055(e)(3)(B) of the Code. Therefore, an estate tax charitable deduction is allowable under section 2055(a) for the present value of the remainder interest in the trust as reformed, determined in accordance with section 20.2055-2(f)(2)(ii). However, the charitable deduction in this case is limited by section 2055(e)(3)(E), which states that the deduction allowed under section 2055(a) with respect to a qualified reformation shall not exceed the amount of the deduction which would have been allowable for the reformable interest but for section 2055(e)(2).

Except as expressly provided herein, 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 ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,
Associate Chief Counsel
(Passthroughs and Special Industries)
By: George Masnik
Chief Branch 4

Enclosures
Copy for section 6110 purposes