

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:ITA:4 – PLR-161026-02
Date:
May 19, 2003

LEGEND:

Trust =
Decedent =
State =
Date 1 =
Date 2 =
Date 3 =
Date 4 =
Statute 1 =
Statute 2 =

Dear _____ :

This letter responds to your letter dated November 4, 2002, requesting a ruling on behalf of the Trust and its beneficiaries that the terminating distributions from the Trust will not result in gain or loss to the Trust or its beneficiaries.

FACTS:

Decedent died on Date 1. Under the terms of Decedent's will, the Trust was established to administer Decedent's assets. Decedent's will provides that the Trust shall terminate 20 years after the death of Decedent's last surviving child. The last surviving child died on Date 2, and under the terms of the will the Trust must terminate on Date 4.

Decedent's will states that at the time of termination the trustees shall partition, or have judicially partitioned, the estate among and between the lawful issue of Decedent's children as shall then be in being.

The trustees and the beneficiaries have established a plan of termination in order to facilitate the upcoming termination of the Trust. The Trust has many diverse real estate holdings, and the trustees and many of the beneficiaries have expressed an interest in

PLR-161026-02

having the holdings of the Trust continue as an on-going business venture. The majority of the holdings of the Trust would be contributed to a limited liability company, in which the Trust would be the controlling member until the Trust termination. The plan of termination allows for the beneficiaries to request the type of assets (cash, interest in limited liability company, or in-kind property) that will be distributed to them upon the Trust termination. The trustees will have the power to reject all or accept all of the distribution requests of the beneficiaries. The distributions received by the beneficiaries will not be pro rata.

Statute 1 states that a trustee may “effect distribution of money and property (that may be made in kind on a pro rata or non-pro rata basis), in divided or undivided interests, and to adjust resulting differences in valuation.” Statute 2 provides that, unless specifically provided in a trust, Statute 1 applies to any trust with a situs in _____, whenever established.

The trustees have filed, in the _____ Court _____, a petition for approval of the termination plan. The trustees have asked the court to determine whether the termination plan meets the terms of Statutes 1 and 2 and the terms of the Decedent’s will. The _____ Court _____ approved the trustee’s petition for approval of the termination plan on Date 3.

LAW AND ANALYSIS:

Section 61(a)(3) of the Internal Revenue Code provides that gross income includes gains derived from dealings in property and, under § 61(a)(15), from an interest in a trust.

Section 1001(a) provides that the gain from the sale or other disposition of property shall be the excess of the amount realized therefrom over the adjusted basis provided in § 1011 for determining gain, and the loss shall be the excess of the adjusted basis provided in § 1011 for determining loss over the amount realized.

Section 1001(b) states that the amount realized from the sale or other disposition of property shall be the sum of any money received plus the fair market value of the property (other than money) received. Under § 1001(c), except as otherwise provided in subtitle A, the entire amount of gain or loss, determined under § 1001, on the sale or exchange of property shall be recognized.

Section 1.1001-1(a) of the Income Tax Regulations provides that the gain or loss realized from the conversion of property into cash, or from the exchange of property for other property differing materially either in kind or in extent, is treated as income or loss sustained.

Rev. Rul. 69-486, 1969-2 C.B. 159, deals with the consequences of a non-pro rata

distribution of trust property made in kind by the trustee. Neither the trust instrument nor local law authorized the trustee to make a non-pro rata distribution of property in kind. Because the trustee was not authorized to make a non-pro rata distribution, the distribution was equivalent to a pro rata distribution followed by an exchange between the beneficiaries and was subject to the provisions of §§ 1001 and 1002.

While the terms of Decedent's will allow for partitioning of the Trust at the Trust's termination, there is no express language prohibiting or allowing non-pro rata distributions. However, unlike the circumstances in Rev. Rul. 69-486, non-pro rata distributions from the Trust are permitted in accordance with Statute 1. Therefore, the transaction will not be equivalent to a pro rata distribution followed by an exchange between the beneficiaries. Accordingly, we conclude that neither the beneficiaries nor the Trust will realize gain or loss as a result of distributions by the Trust under the plan of termination.

CAVEATS:

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

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

Sincerely,

Robert A. Berkovsky
Branch Chief
Office of Associate Chief Counsel
(Income Tax & Accounting)

Enclosures (2)

cc: