

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B04

PLR-132717-04

Date: OCTOBER 15, 2004

In Re:

LEGEND:

Decedent =

Trust A =

Trust B =

Gift Trust 1 =

Gift Trust 2 =

Gift Trust 3 =

Date 1 =

Date 2 =

a =

b =

c =

d =

e =

Charity 1 =

Charity 2 =

Charity 3 =

Charity 4 =

Charity 5 =

Beneficiary 1 =

Beneficiary 2 =

Beneficiary 3 =

Beneficiary 4 =

Foundation =

Dear _____ :

This is in response to a letter dated June 8, 2004 and other correspondence requesting a ruling concerning the deductibility of a charitable bequest under section 2055 of the Internal Revenue Code.

You have requested the following ruling:

Decedent's estate is entitled to a deduction under section 2055(a) for the property passing to Charities 1-3 in Gift Trust 1 and the residuary which passes to Foundation.

The facts presented are as follows:

Decedent executed Trust A on Date 1. Section 2.01 of Trust A provides that Decedent may amend or revoke the trust agreement at any time, unless the Trust Committee has determined that Decedent is incapacitated. Section 2.06 provides that upon Decedent's death, Trust A is to become irrevocable.

Section 5.01 provides that the trustee is to distribute the trust gifts pursuant to sections 5.03 – 5.05 after Decedent's death, after the trustee has paid all death taxes and expenses of administration, and after the trustee has received the estate tax closing letter.

Section 5.02 provides that the trustee is to distribute to a Gift Trust sufficient property to fund the gifts that the Gift Trust makes to each Gift Trust beneficiary if the trustee has determined that all of the following conditions have been met:

- (1) The trustee has determined that the persons who are administering the Gift Trust are the persons and/or entities that the respective Gift Trust appoints as the trustee;
- (2) The trustee has determined that a trust gift has not lapsed;
- (3) The trustee has determined that Decedent did not fund a Gift Trust during Decedent's lifetime (or did not fund the Gift Trust fully) and did not terminate the Trust;
- (4) The trustee has determined that each beneficiary of the Gift Trust has not initiated a Contest (as defined in section 9.05);
- (5) The trustee has obtained a release from each beneficiary of the Gift Trust that states that the beneficiary will not initiate a Contest and that

contains all conditions and requirements that the trustee deems necessary or appropriate; and

- (6) The trustee has obtained from each beneficiary of the Gift Trust a document that states that, when the trustee of the Gift Trust distributes the Gift Trust property to the beneficiary, the beneficiary will provide the trustee with a receipt that states that the beneficiary has received all of the property that the Gift Trust is to give to the beneficiary;

Section 5.03 provides that the trustee of Trust A is to distribute to the trustee of Gift Trust 1 sufficient funds to pay the trust gifts that Gift Trust 1 makes at the time of Decedent's death. On the date that Decedent signed this agreement, Gift Trust 1 made trust gifts of \$a each to Charities 1-3. If Decedent has not amended (and has not pre-funded) Gift Trust 1, then the trustee of Trust A is to distribute \$b to the trustee of Gift Trust 1. If Decedent has amended (or has pre-funded) Gift Trust 1, then the trustee is to distribute to the trustee of Gift Trust 1, the lesser of: (a) the amount that is necessary to fund the trust gifts that Gift Trust 1 makes; or (b) the amount that is necessary to fund the trust gifts that any amendment to Gift Trust 1 makes.

Section 5.04 provides that the trustee of Trust A is to distribute to the trustee of Gift Trust 2 sufficient funds to pay the trust gifts that Gift Trust 2 makes at the time of Decedent's death. On the date that Decedent signed this agreement, Gift Trust 2 made trust gifts of \$c each to Beneficiary 1 and Beneficiary 2. If Decedent has not amended (and has not pre-funded) Gift Trust 2, then the trustee of Trust A is to distribute \$d to the trustee of Gift Trust 2. If Decedent has amended (or has pre-funded) Gift Trust 2, then the trustee is to distribute to the trustee of Gift Trust 2, the lesser of: (a) the amount that is necessary to fund the trust gifts that Gift Trust 2 makes; or (b) the amount that is necessary to fund the trust gifts that any amendment to Gift Trust 2 makes.

Section 5.05 provides that the trustee of Trust A is to distribute to the trustee of Gift Trust 3 sufficient funds to pay the trust gifts that Gift Trust 3 makes at the time of Decedent's death. On the date that Decedent signed this agreement, Gift Trust 3 made trust gifts of \$e each to Beneficiary 3 and Beneficiary 4. If Decedent has amended (or has pre-funded) Gift Trust 3, then the trustee is to distribute to the trustee of Gift Trust 3, the lesser of: (a) the amount that is necessary to fund the trust gifts that Gift Trust 3 makes; or (b) the amount that is necessary to fund the trust gifts that any amendment to Gift Trust 3 makes.

Section 6.02(1) provides that the trustee of Trust A is to distribute to Foundation sufficient funds to fulfill Foundation's pledges to Charity 4 (or to Charity 5), if the trustee of Trust B has certified in writing that Trust B lacks sufficient assets to fulfill all of the pledges that Foundation made to Charity 4 (or Charity 5) before Decedent's death.

Section 6.02(2) provides that the trustee of Trust A is not to make this distribution if the trustee decides that this distribution to Foundation would result in a loss or

reduction of the Charitable Deduction (defined under section 9.03 as the Federal Income Tax and/or Estate Tax deduction that the Internal Revenue Code allows for deductions to qualified charities at the time of Decedent's death and at the time of the distribution of Trust A property and/or Trust A income).

Section 6.02(3) provides that the trustee of Trust A is to distribute the rest of the remainder of Trust A property to Foundation, unless the trustee decided that this would result in a loss of the Charitable Deduction.

Section 6.06 provides that if Trust A receives income after Decedent's death, Decedent intends that the distributions that the trustee makes to charitable beneficiaries not be reduced by taxes; and Decedent directs the trustee to distribute all of the net income of Trust A pursuant to section 6.08 to charitable beneficiaries.

Section 6.08 provides that after the death of Decedent, the trustee is to distribute the net income of this trust to Foundation within the time that the Internal Revenue Code allows for the trust and/or estate to receive a Charitable Deduction for the distribution:

- (1) If the trustee determines that distribution of the net income to Foundation would not qualify for a Charitable Deduction, the trustee is to distribute the net income to Charity 4; or
- (2) If the trustee determines that the distribution of the net income to Charity 4 would not qualify for a Charitable Deduction, the trustee is to distribute the net income to Charity 5.

Section 6.09 provides that after the trustee has distributed all of the property of Trust A and has completed all actions that this trust agreement requires, the Trustee is to terminate the trust.

Section 4.01 of each Gift Trust provides that the trustee is to distribute the Trust property to each listed beneficiary after the trustee has determined: (1) that all of the death taxes and expenses of administration have been paid; (2) that the trust gift beneficiary has not initiated a Contest; and (3) that the trust gift beneficiary has provided the trustee with a release that contains all conditions the trustee requires and that states that: (a) the beneficiary will not initiate a Contest; and (b) the beneficiary has received all of the property that is given to the beneficiary by the trust agreement and/or by Decedent, from any source, including Decedent's trust agreements and non-probate documents.

Section 4.02 of each Gift Trust provides that after the trustee has determined that all of the conditions of section 4.01 have been met, the trustee shall make distributions of cash gifts. The trustee of Gift Trust 1 is to make gifts of \$a each to Charities 1-3. The trustee of Gift Trust 2 is to make gifts of \$c each to Beneficiary 1 and Beneficiary 2. Pursuant to an amendment on Date 1, the trustee of Gift Trust 3 is to make gifts of \$e

each to Beneficiary 3 and Beneficiary 4. The cash gifts to the beneficiaries are to comprise the principal amount only and are not to include income of each Gift Trust. The trustee is to distribute the income of each Gift Trust to a charitable beneficiary pursuant to section 4.07.

Section 4.03 of each Gift Trust provides that after the trustee has distributed all of the section 4.02 Trust Gifts, the trustee is to distribute the Remainder of the Trust Property to Foundation, unless this would result in a loss or reduction of the Charitable Deduction.

Section 4.04 of each Gift Trust provides that if the trustee determines that the distribution of the Remainder of the Trust Property to Foundation would result in a loss or reduction of the Charitable Deduction, then the trustee is to distribute the Remainder of the Trust Property to Charity 4, unless the Trustee determines that this distribution would result in a loss or reduction of the Charitable Deduction.

Section 4.05 of each Gift Trust provides that if the trustee determines that the distribution of the Remainder of the Trust Property to Charity 4 would result in a loss or reduction of the Charitable Deduction, then the trustee is to distribute the Remainder of the Trust Property to Charity 5.

Section 4.07 of each Gift Trust provides that if the gift trust receives income after Decedent's death, Decedent intends that the distributions that the trustee makes to the charitable beneficiaries not be reduced by taxes, and Decedent directs the trustee to distribute all of the net income of the trust to charitable beneficiaries, pursuant to section 4.09.

Section 4.09 of each Gift Trust provides that after the death of Decedent, the trustee is to distribute the net income of each Gift Trust to Foundation within the time that the law allows for the trust and/or estate to receive a Charitable Deduction for the distribution:

- (1) If the trustee determines that the distribution of the net income to Foundation would not qualify for a Charitable Deduction, the trustee is to distribute the net income to Charity 4; or
- (2) If the trustee determines that the distribution of the net income to Charity 4 would not qualify for a Charitable Deduction, the trustee is to distribute the net income to Charity 5.

Section 4.11 of each Gift Trust provides that after the trustee has distributed all of the property of the Gift Trust and has completed all actions that the Trust Agreement requires, the Trustee is to terminate the Gift Trust.

Decedent died on Date 2. In Section 2.01 of Decedent's will, Decedent directs his executor to distribute the remainder of his estate to Trust A.

The estate represents that that the estate is not seeking a charitable deduction for any income that accrues on the principal passing to private individuals or for the principal gifts made to Gift Trust 2 and Gift Trust 3, even if such principal were to pass to Foundation in the event that the individual beneficiaries were to die prior to the issuance of an estate tax closing letter.

LAW AND ANALYSIS

Section 2055(a)(2) provides 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, scientific, literary, or educational purposes. A trust that qualifies under section 501(c)(3) is one that is organized and operated exclusively for these purposes.

Section 2055(e)(2) 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 is extinguished upon the decedent's death) in the same property passes or has passed (for less than an 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)), or

(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 yearly).

Section 20.2055-2(b)(1) of the Estate Tax Regulations provides, in part, that if, as of the date of a decedent's death, a transfer for charitable purposes is dependent upon the performance of some act or the happening of a precedent event in order that it might become effective, no deduction is allowable unless the possibility that the charitable transfer will not become effective is so remote as to be negligible. If an estate or interest has passed to, or is vested in, charity at the time of a decedent's death and the estate or interest would be defeated by the subsequent performance of some act or the happening of some event, the possibility of occurrence of which appeared at the time of the decedent's death to be so remote as to be negligible, the deduction is allowable.

In Rev. Rul. 83-20, 1983-1 C.B. 231, the decedent's will had bequeathed the residue of his estate to Y, a charitable organization. Under the applicable state law, the surviving spouse, S, had been awarded a monthly allowance for support, payable out of the residue, during the period of administration of the estate. The award was fixed by the probate court at an amount referred to in the ruling as 5X dollars. The allowance would terminate in the event of S's death or remarriage or upon completion of administration of the estate. Further, it was shown that in that jurisdiction there was a less than 5% probability that administration of the decedent's estate would extend more than five years beyond the date of his death. The question before the Service was whether the charitable deduction should be disallowed under section 2055(e)(2) because an interest in the residue had passed for charitable purposes and an interest in the same property had passed from the decedent to his spouse for noncharitable purposes. The Service concluded that the estate tax deduction should be allowed, because the only property in which the spouse had an interest was that portion of the residuary estate equal to the maximum amount payable to her as an allowance for support, *i.e.* 5X dollars x 12 months x 5 years, or 300X dollars. (The possibility that administration of the estate would take more than five years, a less than 5% chance, was considered negligible and was disregarded.) S's interest was capable of being measured and severed from the solely charitable property in the residuary estate. The maximum amount that charity can be said to be certain to receive is computed by reducing the value of the residue by the amount that represents the property in which S has an interest by reason of the potential diversion to pay the allowance (or 300X dollars).

In this case, after the conditions of section 4.03 of Trust A are met, the funds from Trust A will be distributed to Gift Trusts 1-3. The conditions of section 4.03 of Trust A, including that the charitable beneficiaries of Gift Trust 1 would contest the will, are so remote that they are negligible. See also Rev. Rul. 81-20, 1981-1 C.B. 471. Therefore, based on the facts submitted and representations made, we conclude that the estate is entitled to a deduction under section 2055(a) for the amount distributed to Gift Trust 1.

Further, as in Rev. Rul. 83-20, the individual beneficiary's interests and the charitable interest in the remainder of decedent's estate, that is distributed first to Trust A and then to the Gift Trusts with the residuary passing to Foundation are severable. The noncharitable beneficiaries of Gift Trusts 2 and 3 take their bequests immediately and completely, subject to the payment of administrative expenses and debts and the issuance of a closing letter, and do not retain any interest in the residuary or in Gift Trust 1. In this case, the noncharitable beneficiaries of Gift Trusts 2 and 3 and Foundation do not share interests in the same property. Therefore, based on the facts submitted and representations made, we conclude that the estate is entitled to a deduction under section 2055(a) for the amount distributed to Foundation.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

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. In particular, we express no opinion as to the deductibility of amounts paid to charitable beneficiaries in the situation described above under any provision of the Code other than section 2055.

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.

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,

Lorraine E. Gardner
Senior Counsel, Branch 4
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure:

Copy of letter for section 6110 purposes