

TAM 8751002, 1986 WL 372935 (IRS TAM)

Internal Revenue Service (I.R.S.)

Technical Advice Memorandum

December 17, 1986

Section 2055 -- Transfer for Public, Charitable, and Religious Uses (Deductible v. Not Deductible)

2055.00-00 Transfer for Public, Charitable, and Religious Uses (Deductible v. Not Deductible)

District Director: * * *

Taxpayer's Name: * * *

Taxpayer's Address: * * *

Taxpayer's ID No.: * * *

Date of Death: * * *

No Conference Held.

ISSUE

Whether an outright bequest to X or, 'its Tribal Council or other persons or entities authorized to accept gifts, bequests and devises for and in behalf, ' of X qualifies for an estate tax charitable deduction under [section 2055\(a\)\(1\) of the Internal Revenue Code](#), in the absence of language in the bequest restricting the use of the property to 'exclusively public purposes.'

FACTS

Y, a resident of State, died testate on Date 1. Y's will was admitted to probate in County Court in Z County, State.

Part XI of Y's will provides as follows:

After the payment of my debts, expenses and taxes, the satisfaction of the bequests and devises in Paragraphs III to X of this will, including the funding of the trust for W, I give, will, devise and bequeath all my estate remaining, of every kind and character and wheresoever situated, to X, or to its Tribal Council, Trustees or other persons or entities authorized to accept gifts, bequests and devises for and in behalf of X; further, it may be that the name X is not the exact name but it is considered sufficiently descriptive and definite, and in any case the beneficiary of my residuary estate is that tribe of Indians known and identified as R whose tribal capitol is or was at or near Q.

The executors of Y's estate have claimed a charitable deduction under [section 2055 of the Internal Revenue Code](#) for the value of the property they calculate to have passed to X under the residuary clause of Part XI of Y's will.

ANALYSIS

[Section 2055\(a\)](#) of the Code provides, 'For purposes of the tax imposed by section 2001, 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 --

(1) to or for the use of the United States, any State, any political subdivision thereof, or the District of Columbia for exclusively public purposes;'

Section 7871(a)(1)(B) of the Code provides that 'An Indian tribal government shall be treated as a State -- For purposes of determining whether and in what amount any contribution or transfer to or for the use of such government (or a political subdivision thereof) is deductible under [sections 2055](#) and [2106\(a\)\(2\)](#) (relating to estate tax

deduction for charitable, etc., contributions and gifts), . . .' As initially enacted section 7871 of the Code was applicable only for the years 1983 and 1984.

[S. Rep. No. 97-646](#), 97th Cong., 2d Sess. 15 (1982) discusses the foregoing provision, 'CHARITABLE CONTRIBUTIONS -- the bill provides that an Indian tribal government is to be treated as a State for purposes of determining whether contributions or transfers to or for the use of the tribal government are deductible for income tax purposes (under sec. 170), estate tax purposes (under [secs. 2055](#) and [2106\(a\)\(2\)](#), and gift tax purposes (sec. 2522). The requirement in each case that the gift be made for 'exclusively public purposes' is to be applied in such a manner as to make it comparable to the effect of that requirement as applied to state governments.'

[Revenue Procedure 83-87, 1983-2 C.B. 606](#), provides a list of Indian tribal governments that were to be treated as states for the two-year period. X is included on the list of Indian tribal governments that are to be treated similarly to states for the specified period.

Section 1065 of the Tax Reform Act of 1984, 1984-3 (Vol. 1) C.B. 556, made permanent the rules treating Indian tribal governments as states.

The phrase 'public purposes', is not easily definable and has not been construed in many cases. It is clear however, that in order for a bequest to qualify as one for exclusively public purposes its benefit to the public must be direct, and not subordinate to any personal interest of private persons. Mertens, Law of Federal Gift and Estate Taxation, section 28.17 (1959).

In commenting on the nature of the public purpose requirement of [section 2055\(a\)\(1\)](#) the court said in [Continental Illinois National Bank and Trust v. U.S., 403 F.2d 721 \(Ct. Claims, 1968\)](#)

Surely Congress chose the word 'public' to encompass something more than 'charitable,' which is used in the rest of the section [2055]. It seems to us that the word 'public' embodies a broader concept, and envisions gifts to domestic governmental bodies for purposes other than the ordinary philanthropic purposes most associate with 'charity.' Consequently, it is our opinion that the use of the word 'public' shows a congressional intention to bring within the statutory exemption gifts which could be used for such standard governmental functions as the payment of salaries to policemen and firemen. The Constitution of X, Article X, Section 5 provides, 'The Secretary-Treasurer shall be authorized to accept all grants, donations of money interest of funds of X, judgments and any and all other sources of monies available to X for the uses and purposes and upon the conditions and limitations for which the same are granted or donated, and the faith of X is hereby pledged to preserve such grants and donations as a sacred trust, and to keep the same for the use and purposes for which they were granted or donated.'

Y's testamentary bequest to X is 'for and in behalf of X.' Upon acceptance of the bequest the Secretary-Treasurer of X is bound under Section 5 of Article X to use the bequest upon the conditions for which it was granted; that is 'for and in behalf of X.' It would be a violation of the Secretary-Treasurer's duty under Article X, Section 5 to cause the bequest to be used for a purpose other than the general welfare of X. We conclude, therefore that X is under a duty to use Y's bequest for public (or tribal) purposes as the tribe, through its Constitution and the actions of its Tribal Council, conceives its tribal purposes to be, and such use may not be subordinate to any personal interest or private persons. Accordingly, Y's bequest to X qualifies for an estate tax charitable deduction under [section 2055\(a\)\(1\)](#) of the Code since the bequest is for 'exclusively public purposes.'

CONCLUSION

Y's outright bequest to X or 'its tribal council or other persons or entities authorized to accept gifts, bequests and devises for and in behalf of X, ' qualifies for an estate tax charitable deduction under [section 2055\(a\)\(1\)](#) as a bequest to a State for exclusively public purposes.

A copy of this technical advice memorandum is to be given to the taxpayer. [Section](#)

[6110\(j\)\(3\) of the Internal Revenue Code](#) provides that it may not be used or cited as precedent.

This document may not be used or cited as precedent. [Section 6110\(j\)\(3\) of the Internal Revenue Code](#).

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