Internal Revenue Service

Number: **200726005**
Release Date: 6/29/2007
Index Number: 2055.12-10

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:PSI:B09
PLR-129812-06
Date:
March 07, 2007

LEGEND

Decedent	=
State	=
Date 1	=
Date 2	=
Bank	=
Beneficiary 1	=
$a	=
$b	=
Charity 1	=
Charity 2	=
Charity 3	=
State Court	=
$c	=

Dear :

This is in response to your authorized representative's letter, dated June 6, 2006, and subsequent correspondence, in which rulings were requested regarding the proposed reformation of a trust under § 2055(e)(3).

The facts presented and representations made are as follows: Decedent, a resident of State, died testate on Date 1. Decedent's last will and testament was admitted to probate on Date 2. Bank qualified as executor under the will at the time of probate.

Article Four of Decedent's will provides that Decedent's residuary estate shall be held in trust (the "Residuary Trust") for the benefit of Beneficiary 1 for a period of five years. During the five year period, the trustee is directed to pay to Beneficiary 1 an annuity in the amount of $a per month. At the end of the five year period, or upon the

death of Beneficiary 1, whichever occurs first, the Residuary Trust will terminate and the trustee shall distribute the remaining assets of the trust equally among three charitable organizations, Charity 1, Charity 2, and Charity 3. At the time of Decedent's death, the residue of Decedent's estate had a fair market value of approximately $b.

The Residuary Trust is not a charitable remainder annuity or unitrust within the meaning of § 664. Thus, the charitable remainder interest does not currently qualify for an estate tax charitable deduction under § 2055. Consequently, Bank plans to petition State Court to modify the provisions of Articles Three and Four of the will in order to qualify the charitable interests for an estate tax charitable deduction under § 2055.

The proposed modification, which will be effective as of the date of Decedent's death, will reform the Residuary Trust into a charitable remainder annuity trust for a term of five years, or until the death of Beneficiary 1, if she dies before the termination of the five year annuity period. The trustee will pay an annual annuity amount equal to five percent of the initial net fair market value of the trust. Of the five percent annual annuity amount, $c will be distributed to Beneficiary 1 and the balance will be distributed equally among Charity 1, Charity 2, and Charity 3. Upon the termination of the annuity period, the remaining trust assets will be distributed equally among Charity 1, Charity 2, and Charity 3.

Based upon the foregoing, your authorized representative has requested rulings (i) that the proposed modification of Decedent's will to establish a residuary charitable remainder annuity trust constitutes a qualified reformation under § 2055(e)(3), and (ii) that Decedent's estate will be entitled to a federal estate tax charitable deduction for the value of the charitable interests in the charitable remainder annuity trust.

Section 664(d)(1) provides that for purposes of § 664, a charitable remainder annuity trust is a trust: (A) from which a sum certain (which is not less than 5 percent nor more than 50 percent of the initial net fair market value of all property placed in trust) is to be paid, not less frequently than annually, to one or more persons (at least one of which is not an organization described in § 170(c) and, in the case of individuals, only to an individual who is living at the time of creation of the trust) for a term of years (not in excess of 20 years) or for the life or lives of such individual or individuals; (B) from which no amount other than the payments described in § 664(d)(1)(A) and other than qualified gratuitous transfers described in § 664(d)(1)(C) may be paid to or for the use of any person other than an organization described in § 170(c); (C) following termination of the payments described in § 664(d)(1)(A), the remainder interest in the trust is to be transferred to, or for the use of, an organization described in § 170(c) or is to be retained by the trust for such a use or, to the extent the remainder interest is in qualified employer securities (as defined in § 664(g)(4)), all or a part of such securities are to be transferred to an employee stock ownership plan (as defined in § 4975(e)(7)) in a qualified gratuitous transfer (as defined in § 664(g)); and (D) with respect to each contribution of property to the trust, the value (determined under § 7520) of the

remainder interest passing to charity is at least 10 percent of the initial net fair market value of all property placed in the trust.

Section 664(f)(1) provides generally that if a trust would, but for a "qualified contingency", meet the requirements of § 664(d)(1)(A) or (2)(A), then the trust shall be treated as meeting such requirements. Under § 664(f)(3), the term "qualified contingency" means any provision of a trust which provides that, upon the happening of a contingency, the payments described in § 664(d)(1)(A) or (2)(A) (as the case may be) will terminate not later than such payments would otherwise terminate under the trust. Finally, under § 664(f)(2) for purposes of determining the amount of any charitable contribution (or the actuarial value of any interest), a qualified contingency is not to be taken into account.

Section 2001(a) imposes a tax on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

Section 2055(a) provides that for purposes of the tax imposed by § 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 to or for the use charitable, religious, scientific, literary, or educational organizations described in §§ 2055(a)(1) – (a)(4).

Section 2055(e)(2) provides that where an interest in property (other than an interest described in § 170(f)(3)(B)) passes or has passed from the decedent to a person, or for a use, described in § 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 § 2055(a), no deduction shall be allowed under § 2055 for the interest which passes or has passed to the person, or for the use described in § 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 § 664) or a pooled income fund (described in § 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 2055(e)(3) provides for the reformation of interests to comply with the requirements of § 2055(e)(2). Section 2055(e)(3)(A) provides that a deduction shall be allowed under § 2055(a) in respect of any qualified reformation.

Section 2055(e)(3)(B) provides that for purposes of § 2055(e), 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 (I) the actuarial value (determined as of

the date of the decedent's death) of the qualified interest, and (II) 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--(I) a charitable remainder interest, the nonremainder interest (before and after the qualified reformation) terminated at the same time, or (II) any other interest, the reformable interest and the qualified interest are for the same period; and (iii) such change is 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 § 2055(a) at the time of the decedent's death but for the split-interest rules of § 2055(e)(2).

Section 2055(e)(3)(C)(ii) provides that the term “reformable interest” does not include any interest unless, before the remainder vests in possession, all payments to persons other than an organization described in § 2055(a) are expressed either in specified dollar amounts or a fixed percentage of the fair market value of the property.

Section 2055(e)(3)(C)(iii)(I) provides that the restriction in § 2055(e)(3)(C)(ii) does 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) provides that for purposes of § 2055(e)(3), the term “qualified interest” means an interest for which a deduction is allowable under § 2055(a).

In this case, under the terms of Decedent’s will the Residuary Trust has both charitable and non-charitable beneficiaries. However, because the Residuary Trust does not meet the requirements of § 664(d)(1), the Decedent’s estate is not entitled to an estate tax charitable deduction under § 2055(e)(2) for the value of the interest in the Residuary Trust that will pass to charity.

The charitable interest in the Residuary Trust is a reformable interest within the meaning of § 2055(e)(3)(C) because it meets both requirements under § 2055(e)(3)(C). First, the charitable remainder interest would have qualified for an estate tax charitable deduction under § 2055(a) but for the provisions of § 2055(e)(2). Second, all payments to Beneficiary 1 are expressed in specific dollar amounts as required under § 2055(e)(3)(C)(ii). Thus, the value of the charitable interest in the Residuary Trust is ascertainable at the date of Decedent’s death and severable from the non-charitable interest.

In addition, the proposed reformation satisfies the requirements of a qualified reformation under § 2055(e)(3) because (i) the difference between the actuarial value (determined as of the date of decedent’s death) of the qualified interest and 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) the nonremainder interest terminates at the same time both before and after the reformation; and (iii) the reformation is effective as of the date of Decedent's death.

Provided that the Residuary Trust, as judicially reformed, is a valid trust under applicable state law and satisfies the requirements of §§ 664(d)(1)(A), (B), (C), and (D), and the applicable regulations, and provided that all taxes and expenses payable by the estate must be paid out of the residue of the estate prior to the funding of the Residuary Trust, we conclude, based on the facts submitted and representations made, that the proposed reformation of the Residuary Trust will be a qualified reformation within the meaning of § 2055(e)(3). Therefore, an estate tax charitable deduction will be allowable under § 2055(a) for the present value of the charitable annuity interests and the charitable remainder interests in the Residuary Trust. The value of the charitable interests shall be determined pursuant to § 20.2055-2(f). In this regard, we note that in determining the present value of the charitable remainder interest in the Residuary Trust, the qualified contingency is not taken into account pursuant to the provisions of § 664(f)(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) provides that it may not be used or cited as precedent.

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

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.

Sincerely,

James F. Hogan
Acting Branch Chief, Branch 9
(Passthroughs & Special Industries)

Enclosure
Copy for 6110 purposes