

Internal Revenue Service

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Washington, DC 20224

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Person To Contact: _____, ID No.

Telephone Number:

In Re:

Refer Reply To:
CC:PSI:B09
PLR-101598-06
Date:
February 21, 2006

Legend:

Decedent =
Beneficiary =

Charity =
Date 1 =
X =
Y =
Z =

Dear _____ :

This is in response to a letter dated December 27, 2005, and subsequent correspondence, requesting a ruling regarding the reformation of a testamentary charitable remainder unitrust under § 2055(e)(3) of the Internal Revenue Code.

Decedent died on Date 1. Clause Sixth of Decedent's will provides that \$ X is to be held in trust (Trust) for the benefit of Beneficiary and Charity. During Beneficiary's lifetime, Beneficiary is to receive each year a unitrust amount equal to 4 percent of the net fair market value of the Trust's assets. Upon Beneficiary's death, Trust's remainder interest is to be paid to Charity. Clause Sixth authorizes the trustees to amend the Trust so that the Trust qualifies as a charitable remainder unitrust with in the meaning of § 664. It has been represented that Charity meets the requirements of § 170(c).

Decedent's estate intends to reform Trust under § 2055(e)(3) in state court. It has been represented that Trust's terms, as reformed, will conform with the requirements of § 664(d)(2). In addition, it has been represented that Trust's terms will provide for an annual payment of a unitrust amount equal to 5 percent of the net fair market value of the Trust's assets, Y percent of which will be paid to Beneficiary and Z percent of which will be paid to Charity. It is represented that the proposed reformation will be effective

as of the Decedent's date of death. At Beneficiary's death, the trust remainder is to be distributed to Charity.

The executors of Decedent's estate are requesting rulings: (1) that the Trust is eligible for reformation under § 2055(e)(3); (2) that the proposed reformation will be a qualified reformation within the meaning of § 2055(e)(3); and (3) that after the proposed reformation, the remainder interest and the unitrust interest passing to Charity will be qualified interests within the meaning of § 2055(e)(3)(D).

Law and Analysis:

Section 664(d)(2)(A) provides, in part, that a charitable remainder unitrust is a trust from which a fixed percentage (which is not less than 5 percent nor more than 50 percent) of the net fair market value of its assets, valued annually, is to be paid not less often 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 the 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.

Section 2055(a) provides that, for purposes of the federal estate tax, 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, and transfers to or for a corporation or certain other organizations organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes.

Section 2055(e)(2)(A) 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 that passes or has passed to the person, or for the use, described in § 2055(a) unless, 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)).

Section 2055(e)(3)(A) provides, in general, that a deduction shall be allowed under § 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-- (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) provides that the term "reformable interest" means any interest for which a deduction would be allowable under § 2055(a) at the time of the decedent's death but for § 2055(e)(2). Prior to the enactment of § 2055(e)(2), under § 20.2055-2(a) of the Estate Tax Regulations, if a trust was created or property was transferred for both a charitable and a private purpose, a deduction was allowed for the value of the charitable interest if the charitable interest was presently ascertainable, and hence severable from the noncharitable interest.

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) provides, however, that § 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— (I) if an estate tax return is required to be filed, the last date (including extensions) for filing such return, or (II) if no estate tax return is required to be filed, the last date (including extensions) for filing the income tax return for the first taxable year for which such a return is required to be filed by the trust.

Section 2055(e)(3)(D) provides that the term "qualified interest" means an interest for which a deduction is allowable under § 2055(a).

Section 2055(e)(3)(E) provides that the deduction referred to in § 2055(e)(3)(A) shall not exceed the amount of the deduction which would have been allowable for the reformable interest but for § 2055(e)(2).

In this case, prior to the reformation, the Beneficiary's unitrust interest is expressed as a fixed percentage of the fair market value of the Trust's property. Accordingly, the remainder interest to Charity is a reformable interest within the meaning of § 2055(e)(3)(C)(i) because a deduction would have been allowable under § 2055(a) for this interest, if not for the requirements of § 2055(e)(2). Based upon the facts submitted and the representations made, we conclude that Trust is eligible for reformation under § 2055(e)(3).

Further, the proposed reformation in this case satisfies the requirements of § 2055(e)(3)(B). The difference between the actuarial value of the qualified interest and the actuarial value of the reformable interest does not exceed 5 percent of the actuarial value of the reformable interest. Both before and after the proposed reformation, Beneficiary's interest will terminate at her death. Further, it is represented that the proposed reformation will be effective as of the Decedent's date of death.

Accordingly, based on the facts submitted and representations made, we conclude that, provided the proposed reformations are made within 90 days of the due date of the Federal estate tax return, including extensions actually granted, and comply with state law, the proposed reformation of Trust will result in a qualified reformation under § 2055(e)(3), and the remainder interest and unitrust interest passing to Charity will be qualified interests within the meaning of § 2055(e)(3)(D).

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,

Melissa C. Liquerman

Melissa C. Liquerman
Branch Chief, Branch 9
(Passthroughs & Special Industries)

Enclosures:
Copy for § 6110 purposes

cc: