

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:2 - PLR-101873-02
Date:
May 13, 2002

Estate =

Decedent =

D1 =

a =

b =

Dear :

This letter responds to a letter dated December 20, 2001, submitted by the authorized representative of Estate, requesting rulings under § 691 of the Internal Revenue Code.

The information submitted states that Decedent died on D1. Decedent's Estate included four contracts, represented as being annuities described in § 403(b), and three individual retirement accounts (IRAs), represented as being qualified IRAs described in § 408. Decedent was also the beneficiary of a custodial account held in the name of the Decedent's late spouse, represented as being an account described in § 403(b)(7). These accounts are collectively known as the Retirement Accounts.

Decedent named Estate as the beneficiary of all of the Retirement Accounts, except for the custodial account of which Decedent was the beneficiary, of which the Estate is the successor beneficiary.

Article Second of Decedent's will left Decedent's estate, after payment of debts, funeral and burial expenses, and costs of administration, a% to named charities, each of which is represented as being an organization described in § 501(c)(3) and a public charity within the meaning of §§ 509(a)(1) and (2), and b% to named individuals (or their issue, if any of the named individuals should predecease Decedent).

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Article Fourth, Section 10, provides that Decedent's executor shall have the power to make distributions in cash or in kind (including non pro-rata distributions of undivided interests in property), at such values as the executor shall determine; to make any income tax elections concerning in-kind distributions; and in making such distributions the executor may allocate assets to a particular beneficiary without regard to the basis of such assets. Decedent's executor represents that this language is valid under state law.

An interim distribution of cash was made to the Estate's individual beneficiaries. No distribution has been made to the charities. Therefore, the fraction of the remaining Estate assets to which the charities are entitled is slightly in excess of a%. The current value of the Retirement Accounts as a percentage of the Estate is approximately a%. The executor of Estate proposes to assign its beneficial interests in the Retirement Accounts to the charities in satisfaction of their respective shares of the Estate. If the value of the Retirement Accounts exceeds the charities' aggregate share of the Estate, a partial assignment will be made with respect to one of the Retirement Accounts, so that each charity receives only the value to which it is entitled, with the excess allocated to the individual beneficiaries. It is contemplated that the charities will then cause the Retirement Accounts to be distributed to them.

The executor of the Estate requests a ruling that the proposed assignment of the Retirement Accounts in satisfaction of their percentage shares of the Estate will not cause either the Estate or any of the individual beneficiaries to have taxable income, nor will it be taken into account in the computation of the Estate's distributable net income (DNI) for the taxable year of the assignment. The charities will realize income in respect of a decedent (IRD) by reason of the distributions to them from the Retirement Accounts assigned to them, but such income will not be taxable by reason of the charities' exempt status under § 501(c)(3).

Section 691(a)(1) provides that the amount of all items of gross income in respect of a decedent which are not properly includable in respect of the taxable period in which falls the date of the decedent's death or a prior period (including the amount of all items of gross income in respect of a prior decedent, if the right to receive such amount was acquired by reason of the death of the prior decedent or by bequest, devise, or inheritance from the prior decedent) shall be included in the gross income, for the taxable year when received, of: (A) the estate of the decedent, if the right to receive the amount is acquired by the decedent's estate from the decedent; (B) the person who, by reason of the death of the decedent, acquires the right to receive the amount, if the right to receive the amount is not acquired by the decedent's estate from the decedent; or (C) the person who acquires from the decedent the right to receive the amount by bequest, devise, or inheritance, if the amount is received after a distribution by the decedent's estate of such right.

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Section 1.691(a)-1(b) of the Income Tax Regulations provides that the term “income in respect of a decedent” refers to those amounts to which a decedent was entitled as gross income, but which were not properly includable in computing the decedent’s taxable income for the taxable year ending with the date of the decedent’s death or for a previous taxable year under the method of accounting employed by the decedent.

Rev. Rul. 92-47, 1992-1 C.B. 198, holds that a distribution to the beneficiary of a decedent’s IRA that equals the amount of the balance in the IRA at the decedent’s death, less any nondeductible contributions, is income in respect of a decedent under § 691(a)(1) that is includable in the gross income of the beneficiary for the tax year the distribution is received.

Section 691(a)(2) provides that if a right, described in § 691(a)(1), to receive an amount is transferred by the estate of the decedent or a person who received such right by reason of the death of the decedent or by bequest, devise, or inheritance from the decedent, there shall be included in the gross income of the estate or such person, as the case may be, for the taxable period in which the transfer occurs, the fair market value of such right at the time of such transfer plus the amount by which any consideration for the transfer exceeds such fair market value. For purposes of this paragraph, the term “transfer” includes sale, exchange, or other disposition, or the satisfaction of an installment obligation at other than face value, but does not include transmission at death to the estate of the decedent or a transfer to a person pursuant to the right of such person to receive such amount by reason of the death of the decedent or by bequest, devise, or inheritance from the decedent.

Section 691(a)(3) provides that the right to receive an amount of income in respect of a decedent shall be treated, in the hands of the estate of the decedent or any person who acquired such right by reason of the death of the decedent, or by bequest, devise, or inheritance from the decedent, as if it had been acquired by the estate or such person in the transaction in which the right to receive the income was originally derived and the amount includable in gross income shall be considered, in the hands of the estate or such person to have the character which it would have had in the hands of the decedent if the decedent had lived and received such income.

Section 1.691(a)-4(b) provides that if the estate of a decedent or any person transmits the right to income in respect of a decedent to another who would be required by § 691(a)(1) to include such income when received in his gross income, only the transferee will include such income when received in his gross income.

Section 1.691(a)-4(b)(2) provides that if a right to income in respect of a decedent is transferred by an estate to a specific or residuary legatee, only the specific or residuary legatee must include such income in gross income when received.

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Based solely on the facts and representations submitted, we conclude that the assignment of the Retirement Accounts in satisfaction of their percentage shares of the Estate will not cause either the Estate or any of the individual beneficiaries to have taxable income, nor will the assignment cause any amounts to be taken into account in the computation of the Estate's DNI for the taxable year of the assignment. The charities will realize income in respect of a decedent by reason of the distributions to them from the Retirement Accounts assigned to them, to the extent of the value of the Retirement Accounts as of D1, but such income will not be taxable by reason of the charities' exempt status under § 501(c)(3).

Except as set forth above, no opinion is expressed or implied as to the federal income tax consequences of the transactions described above under any other provision of the Code. Specifically, we express no opinion as to the qualification of the Retirement Accounts under §§ 403(b) and 408 or of the charities under §§ 501(c)(3) and 509(a).

This ruling is directed only to the taxpayer on whose behalf it was requested. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to Estate's authorized representative.

Sincerely yours,

J. THOMAS HINES
Chief, Branch 2
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures: 2
Copy of this letter
Copy for § 6110 purposes