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Person To Contact:
, ID No.

Telephone Number:

In Re:

Refer Reply To:
CC:PSI:B04
PLR-130192-12
Date:
January 09, 2013

Legend:

Decedent	=
Estate	=
Court 1	=
Court 2	=
State	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=

Dear :

This letter responds to your authorized representative's submission dated July 12, 2012, and subsequent correspondence, in which you requested rulings under §§ 2601 and 2055 of the Internal Revenue Code.

The facts submitted and the representations made are as follows. On Date 1, a date prior to September 25, 1985, Decedent executed a will subject to the laws of State. The will provided for Decedent's property to be distributed to her surviving spouse, children, grandchildren, and charity. Shortly after she executed the will and before September 25, 1985, Decedent was adjudged incompetent by Court 1. Decedent did not regain competency prior to her death on Date 2. Decedent's executors timely filed a Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, including therein a copy of the judgment of incompetency.

After Decedent's death, each beneficiary advocated for his or her own interpretation of Decedent's will and State law, insofar as the beneficiaries did not agree on the amount each beneficiary was to receive under the terms of the will. As a result,

on Date 3, Decedent's estate (Estate) petitioned Court 2 for construction and reformation of Decedent's will, to resolve the issue as to the amount each beneficiary was to receive under Decedent's will. Estate and the beneficiaries were represented by separate counsel; the charitable beneficiaries were represented by the Attorney General of State. Estate and the beneficiaries agree that each beneficiary's proposed resolution of the issue has merit. Moreover, they seek to avoid the expense, uncertainty, and delay that would result if they should continue to litigate this issue. Accordingly, before Court 2 ruled on the substantive issue, Estate and the beneficiaries entered into a settlement agreement (Settlement). Court 2 approved the Settlement by order on Date 4.

Decedent's estate is requesting the following two rulings:

1. Amounts distributed pursuant to the Settlement are not subject to the generation-skipping transfer (GST) tax; and
2. Estate will receive a charitable deduction under § 2055(a) for amounts distributed to charity pursuant to the Settlement.

Law and Analysis:

Ruling 1:

Section 2601 of the Code imposes a tax on every GST made after October 22, 1986.

Under § 1433(b)(2)(C) of the Tax Reform Act of 1986 (Act), the tax does not apply to any GST -- (i) under a trust to the extent such trust consists of property included in the gross estate of a decedent (other than property transferred by the decedent during his life after the date of the enactment of the Act), or reinvestments thereof, or (ii) that is a direct skip that occurs by reason of the death of any decedent; but only if such decedent was, on the date of the enactment of the Act, under a mental disability to change the disposition of his property and did not regain his competence to dispose of such property before the date of death.

Section 26.2601-1(b)(3)(i) of the Generation-Skipping Transfer Tax Regulations provides that if an individual was under a mental disability to change the disposition of his or her property continuously from October 22, 1986, until the date of his or her death, the provisions of chapter 13 do not apply to any GST -- (A) under a trust (as defined in § 2652(b)) to the extent such trust consists of property, or the proceeds of property, the value of which was included in the gross estate of the individual (other than property transferred by or on behalf of the individual during the individual's life after October 22, 1986); or (B) which is a direct skip (other than a direct skip from a trust) that occurs by reason of the death of the individual.

Section 26.2601-1(b)(3)(ii) provides that the term “mental disability” means mental incompetence to execute an instrument governing the disposition of the individual's property, whether or not there was an adjudication of incompetence and regardless of whether there has been an appointment of a guardian, fiduciary, or other person charged with either the care of the individual or the care of the individual's property.

Section 26.2601-1(b)(3)(iv) provides that if the decedent has been adjudged mentally incompetent on or before October 22, 1986, a copy of the judgment or decree, and any modification thereof, must be filed with the Form 706.

Section 26.2601-1(b)(4)(i) provides rules for determining when a modification, judicial construction, settlement agreement, or trustee action with respect to a trust exempt from the GST tax under §§ 26.2601-1(b)(1), 26.2601-1(b)(2), or 26.2601-1(b)(3) will not cause the trust to lose its exempt status.

Section 26.2601-1(b)(4)(i)(B) provides that a court-approved settlement of a bona fide issue regarding the administration of the trust or the construction of terms of the governing instrument will not cause an exempt trust to be subject to the provisions of chapter 13, if -- (1) the settlement is the product of arm's length negotiations; and (2) the settlement is within the range of reasonable outcomes under the governing instrument and applicable state law addressing the issues resolved by the settlement. A settlement that results in a compromise between the positions of the litigating parties and reflects the parties' assessments of the relative strengths of their positions is a settlement that is within the range of reasonable outcomes.

Based upon the facts submitted and the representations made, we find that Decedent was under a mental disability to change the disposition of Decedent's property continuously from October 22, 1986, until her death. The Settlement is the product of arm's length negotiations. The Settlement resolves the issue as to the amount each beneficiary is to receive in a manner consistent with applicable State law. The Settlement represents a compromise between the beneficiaries and reflects the parties' assessments of the relative strengths of their positions. Further, the Settlement is within the range of reasonable outcomes under the will and applicable State law. Accordingly, based upon the facts submitted and the representations made, we find that the provisions of chapter 13 do not apply to any GST resulting from the Settlement.

Ruling 2:

Under § 2055(a)(2), 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 § 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 § 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), 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).

In Rev. Rul. 89-31, 1989-1 C.B. 277, the estate was entitled to a charitable deduction under § 2055(a) for a remainder interest in a split interest trust passing directly to a named charity pursuant to a settlement of a bona fide will contest.

In this case, the Settlement is a settlement of a bona fide will contest within the meaning of Rev. Rul. 89-31. Accordingly, based upon the facts submitted and the representations made, we conclude that Estate is entitled to a charitable deduction under § 2055(a) for amounts passing to charity pursuant to the Settlement.

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,

Leslie H. Finlow

Leslie H. Finlow
Senior Technician Reviewer, Branch 4
(Passthroughs & Special Industries)

Enclosures: Copy for § 6110 purposes

cc: