

**INTERNAL REVENUE SERVICE**  
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

September 30, 2002

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Index (UIL) No.: 2055.09-02  
CASE MIS No.: TAM-132323-02/CC:PA:PDI:B9

Taxpayer's Name:  
Taxpayer's Address:

Taxpayer's Identification No:  
Date of Death:  
Date of Conference:

LEGEND:

Decedent =  
Charity =  
Beneficiary 1 =  
Beneficiary 2 =  
Date 1 =  
Date 2 =  
Date 3 =  
State =  
Statute 1 =  
Statute 2 =  
Statute 3 =  
Statute 4 =  
Cases =

a =  
b =  
c =

ISSUE:

Whether Decedent's estate is entitled to a charitable deduction under § 2055(a) of the Internal Revenue Code for amounts paid to Charity pursuant to the settlement of a will contest.

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CONCLUSION:

Decedent's estate is not entitled to a charitable deduction under § 2055(a) for the settlement proceeds paid to Charity.

FACTS:

Decedent died on Date 1. Prior to his death, Decedent executed seven wills and one codicil over a thirty-five year period. In each of the wills, Decedent expressly revoked all prior wills and codicils. Only the first will, which was executed on Date 2 (First Will), named Charity as a beneficiary.

The First Will left a specific bequest to Beneficiary 1, certain real property to a charity, personal property to two relatives, and established a residuary trust. The residuary trust provided a lifetime interest to one of Decedent's sisters and a remainder interest to Charity.

Decedent's last will, which was executed on Date 3 (Last Will), left two specific bequests, established a trust in which the lifetime beneficiary was Beneficiary 1 and the remainder beneficiary was Beneficiary 2, and gave the remainder of his estate to Beneficiary 2. Decedent's two sisters predeceased him.

After Decedent's death, the executor submitted the Last Will for probate. Decedent's nieces and nephews and Charity commenced an action contesting the probate of the Last Will. After a jury had been selected for the court proceeding, the parties settled the action. Pursuant to the settlement agreement, Decedent's estate reduced the bequests to Beneficiary 1 and Beneficiary 2 by \$ a and \$ b, respectively and paid these settlement proceeds to Decedent's nieces, nephews, and Charity. Charity received \$ c of the settlement proceeds.

LAW and ANALYSIS:

Section 2055(a) provides that the value of the taxable estate shall be determined by deducting from the value of the gross estate the amount of all transfers for charitable purposes.

Section 20.2055-1(a) of the Estate Tax Regulations provides, in part, that a deduction is allowed under § 2055(a) from the gross estate of a decedent who was a citizen or resident of the United States at the time of his death for the value of property included in the decedent's gross estate and transferred by the decedent during his lifetime or by will for charitable purposes.

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Section 20.2055-2(e)(1) provides, in part, that the principles of § 2056 and the regulations thereunder shall apply for purposes of determining under this subparagraph whether an interest in property passes or has passed from the decedent.

Section 20.2056(c)-2(d)(2) provides that, if as a result of the controversy involving the decedent's will, or involving any bequest or devise thereunder, a property interest is assigned or surrendered to the surviving spouse, the interest so acquired will be regarded as having passed from the decedent to the surviving spouse only if the assignment or surrender was a bona fide recognition of enforceable rights of the surviving spouse in the decedent's estate. If the assignment or surrender was pursuant to an agreement not to contest the will, it will not necessarily be accepted as a bona fide evaluation of the rights of the spouse.

Statute 1 sets forth the formalities required under State law for the execution of a will and codicil such as the number of attesting witnesses necessary and the location of the testator's signature. Statute 2 provides that the court may require the live testimony of the witnesses attesting the will before accepting a will for probate. Statute 3 provides that a will or any part thereof may be revoked or altered by another will or a writing of the testator clearly indicating an intention to effect such revocation or alteration. Such revocation or alteration must be executed in accordance with the formalities set forth in Statute 1. Statute 4 provides that the revocation or alteration of a latter will will not, of itself, revive the prior will or any provision thereof. A prior will may be revived by republishing the will, executing a codicil incorporating the provisions of the prior will, or executing a writing declaring that the prior will is to be revived. All three options must be executed in accordance with all the formalities set forth in Statute 1. In State, if a testamentary document that purports to revoke all prior wills does not comply with the statutory requirements for executing a will than it cannot vary or revoke the terms of a prior will. See Cases.

In determining whether an amount paid to a charity pursuant to the settlement of a will contest is deductible for estate tax purposes, the appropriate inquiry is whether the interest in issue reaches the charity pursuant to correctly interpreted and applied state law, and not whether the interest reached the charity as a result of a good faith adversary proceeding. Terre Haute First Nat'l Bank v. United States, 91-1 U.S. Tax Cas. (CCH) P60070 (S.D. Ind. 1991); see Ahmanson Foundation v. United States, 674 F.2d 761 (9th Cir. 1981) (holding that an amount paid to a surviving spouse pursuant to a good faith settlement does not qualify for the estate tax marital deduction to the extent the spouse receives more than could have been obtained if the spouse had litigated the claim to conclusion).

In the instant case, Charity was named as a beneficiary in Decedent's First Will which was executed approximately thirty-five years prior to his death. Charity is not named as a beneficiary in any of the six wills and one codicil Decedent executed subsequent to Decedent's First Will. In order for Charity to establish an enforceable right to any

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portion of Decedent's estate, Charity would have to establish that the First Will was the proper will to probate. To do this Charity would have to establish that the First Will had been executed with proper formality and was not subject to such factors as undue influence or fraud, and that the First Will had not been revoked by the subsequent wills and one codicil because all of these instruments failed to comply with the statutory formalities or were subject to such factors as undue influence or fraud. After a review of State law, we believe there existed little possibility that a State court would admit the First Will for probate. Under these circumstances, we believe Charity did not have any recognizable, enforceable rights, under State law properly applied, to any portion of Decedent's estate. See § 20.2056(c)-2(d)(2).

Accordingly, Decedent's estate is not entitled to a charitable deduction under § 2055 for the settlement proceeds paid to Charity.

CAVEAT(S)

A copy of this technical advice memorandum is to be given to the taxpayer(s). Section 6110(k)(3) provides that it may not be used or cited as precedent.