

Internal Revenue Service

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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:B02
PLR-136398-04
Date:

February 08, 2005

Estate =

Decedent =

Charity =

D1 =

Dear _____:

This letter responds to your letter dated September 3, 2003, and subsequent correspondence, submitted on behalf of the Estate as the Estate's authorized representative, requesting a ruling under the Internal Revenue Code.

The information submitted states that Decedent died on D1, owning certain individual retirement accounts (the IRAs), each represented as meeting the requirements of § 408. Decedent's Estate is the named beneficiary of the IRAs. Additionally, Decedent was the named beneficiary of a § 401(k) plan (Plan). Decedent had not designated a beneficiary of Plan as of D1, so that the amounts in Plan will be payable to Decedent's Estate.

Decedent's will names the Charity as a residuary beneficiary. The executor of the Estate proposes to assign the IRAs and Plan to the Charity in partial satisfaction of the Charity's share of the residue. Decedent's will provides that the executor is authorized to make distributions in cash, in kind valued at fair market value of the property at the date of distribution, or partly in each, without being required to make pro rata distributions of such property.

Section 691(a)(1) of the Code provides that the amount of all items of gross income in respect of a decedent (IRD) which are not properly includible 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.

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 1.691(a)-4(b) of the Income Tax Regulations provides that if the estate of a decedent or any person transmits the right to IRD 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. In this situation, a transfer within the meaning of § 691(a)(2) has not occurred.

Section 1.691(a)-4(b)(2) provides that if a right to IRD 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.

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 IRD under § 691(a)(1) that is includable in the gross income of the beneficiary for the tax year the distribution is received.

Based solely on the facts and representations submitted, we conclude that the assignment of the IRAs and Plan to the Charity in satisfaction of its shares of the residue of the Estate will not be a transfer within the meaning of § 691(a)(2). Only

Charity will include the amounts in the IRAs and Plan in its gross income when the distribution or distributions from the IRA or Plan are received by the Charity.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Code.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code 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 the executor of Estate.

Sincerely,

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