

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact: _____, ID No.

Telephone Number:

Re:

Refer Reply To:
CC:PSI:B04
PLR-102027-19
Date:
August 12, 2019

Legend

Decedent =
Trust =

Date 1 =
Date 2 =
Date 3 =
Date 4 =
Date 5 =
Date 6 =
Date 7 =
Date 8 =
Foundation =
Child 1 =
Child 2 =
Child 3 =
Child 4 =
Child 5 =
Child 6 =
Child 7 =
Court =

State =
Trustees =

Dear _____ :

This letter responds to your letter dated December 11, 2018, requesting rulings with respect to the reformation of a trust under § 2055(e)(3) of the Internal Revenue Code.

On Date 1, Decedent created a revocable trust, Trust. The last amendment made to Trust was Date 2. Under § 6.4, as amended, Trust provides that, upon the death of Decedent, the residue of the estate is to be administered as a unitrust for the benefit of Decedent's six living children, Child 1 through Child 6, and the issue of his predeceased child, Child 7 (Child 7's Share). Under § 6.4.1, during the beneficiaries' lives, the trustee is to pay or apply for the benefit of the Decedent's children, Child 1 through Child 6, and the issue of Child 7 or the survivor of them, three and five-tenths percent of the aggregate net fair market value of the trust. Further, upon the death of a beneficiary, the portion of the unitrust amount to which the deceased beneficiary would have been entitled is to be paid to Foundation. In no event shall the portion of the unitrust amount to which Child 7's children, or the survivor of them, are entitled continue beyond the unitrust payment to be made on Date 8, after which time such payments shall instead be paid to Foundation. Upon the death of the last surviving beneficiary, the trustee shall distribute the entire balance of the trust estate along with the income outright to Foundation. However, if Foundation is not an organization described in §§ 170(c), 2055(a), and 2522(a) or is no longer in existence at such time, the entire remaining balance is to be distributed to one or more organizations described in §§ 170(c), 2055(a), and 2522(a) which are operated for purposes similar to the charitable purposes of Foundation.

Under § 6.4.3, notwithstanding the provision of § 6.4, any distributions to be made to or for the benefit of Child 1, are subject to the provision of § 6.4.3. Under that section, a special needs trust, Trust 1, was established to benefit Child 1 and the unitrust payment would be paid to Trust 1 to benefit Child 1. Specifically, during Child 1's lifetime, the trustee of Trust 1 is authorized to accumulate and hold in a separate account for Child 1's benefit all of the distributions to which Child is entitled pursuant to § 6.4. Upon Child 1's death or earlier termination, the trustee shall distribute the entire remaining balance of Trust 1, as provided in § 6.4.1.

Decedent died on Date 3. At Decedent's death, Trust did not qualify for the estate tax charitable deduction under § 2055(a) because Trust was not a charitable remainder unitrust (CRUT) within the meaning of § 664(d)(2). On Date 4, Trustees of Trust filed a petition with State Court to reform Trust to change the unitrust amount from three and five-tenths percent to five percent in order to qualify Trust as a CRUT described in § 664(d)(2). Date 4 was within 90 days after the last date (including extension) for filing Decedent's estate tax return. State Court granted the petition and an order was filed on Date 5 (Date 5 Reformation).

On Date 6, Trustees reviewed Trust, as reformed, and determined that Trust may not qualify as a CRUT because the payments, even though stated in a fixed percentage, as required under § 644(d)(2), were not limited to a term of 20 years for Child 7's Share, and payments to Trust 1 were not limited to a term or life expectancy.

Trustees petitioned State Court to reform Trust:

(i) to provide for the unitrust payout of five percent to be divided among Child 1 through Child 6, Child 7's issue, and Foundation;

(ii) to provide that the unitrust payments to Child 7's Share will cease upon the earlier to occur of Child 7's issue death or twenty (20) years from the commencement of the unitrust payments;

(iii) to name Child 1's estate as the remainder beneficiary of Trust 1, the special needs trust.

On Date 7, State Court issued an order approving the reformation of Trust, effective as of the date of Decedent's death (Date 7 Reformation). As part of the submission for this private letter ruling, Trustees of Trust submitted computations that calculate the value of the charitable interest in Trust for review by the Internal Revenue Service (IRS). Upon completion of such review, Trustees adjusted the calculations to reflect the correct values. It is represented that Trustees will petition State Court to amend the court order to reflect the corrected values, as adjusted by the IRS.

Your authorized representative has requested the following rulings:

1. The charitable interests are "reformable interests" within the meaning of § 2055(e)(3)(C).
2. The Date 8 Reformation is a qualified reformation of Trust, within the meaning of § 2055(e)(3)(B).
3. A deduction under § 2055(a) will be allowable for the present value of the remainder interest in Trust.
4. A deduction under § 2055(a) will be allowable for the present value of Foundation's portion of the unitrust interest.

LAW AND ANALYSIS

Section 664(d)(2) provides, in relevant part, that a CRUT is a trust: (A) 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, (B) from which no amount other than the

payments described in § 664(d)(2)(A) and other than qualified gratuitous transfers described in § 664(d)(2)(C) may be paid to or for the use of any person other than an organization described in § 170(c), (C) following the termination of the payments described in § 664(d)(2)(A), the remainder interest in the trust is to be transferred to, or for the use of, an organization described in § 170(c) or is to be retained by the trust for such a use, and (D) with respect to each contribution of property to the trust, the value (determined under § 7520) of such remainder interest in such property is at least 10 percent of the net fair market value of such property as of the date such property is contributed to the trust.

Section 664(d)(3) provides that notwithstanding the provisions of § 664(d)(2)(A) and (B), the trust instrument may provide that the trustee shall pay the income beneficiary for any year -- (A) the amount of the trust income, if such amount is less than the amount required to be distributed under § 664(d)(2)(A), and (B) any amount of the trust income which is in excess of the amount required to be distributed under § 664(d)(2)(A), to the extent that (by reason of § 664(d)(3)(A)) the aggregate of the amounts paid in prior years was less than the aggregate of such required amounts.

Section 1.664-1(a)(4) of the Income Tax Regulations provides that, in part, in order for a trust to be a charitable remainder trust, it must meet the definition of and function exclusively as a charitable remainder trust from the creation of the trust.

In Rev. Rul. 2002-20, the Service ruled that, a trust may qualify as a charitable remainder unitrust under § 664 if the unitrust amounts will be paid for the life of a financially disabled individual to a separate trust that will administer these payments on behalf of that individual and, upon the individual's death, will distribute the remaining assets either to the individual's estate or, after reimbursing the state for any Medicaid benefits provided to the individual, subject to the individual's general power of appointment.

Section 2001(a) imposes a tax on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

Section 2055(a) provides that, in part, for purposes of the tax imposed by § 2001, 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 the use of any corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes.

Section 2055(e)(2) 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 a use, 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 other than a remainder 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).

Section 2055(e)(3)(A) provides that a deduction shall be allowed under § 2055(a) in respect of any qualified reformation.

Section 2055(e)(3)(B) defines the term “qualified reformation” to mean a change of a governing instrument by reformation, amendment, construction, or otherwise that 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) the change is effective as of the date of the decedent’s death.

Under § 2055(e)(3)(B), a nonremainder interest (before reformation) for a term of years in excess of 20 years shall be treated as satisfying § 2055(e)(3)(B)(ii)(I) if such interest (after reformation) is for a term of 20 years.

Section 2055(e)(3)(C)(i) defines the term “reformable interest” to mean 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).

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. For purposes of determining whether all such payments are expressed as a fixed percentage of the fair market value of the property, § 664(d)(3) shall be taken into account.

Section 2055(e)(3)(C)(iii) provides, in part, that § 2055(e)(3)(C)(ii) does not apply to any interest if not later than 90 days after the last date (including extensions) for filing an estate tax return, if an estate tax return is required to be filed, a judicial proceeding is commenced to change the interest into a qualified interest.

Section 2055(e)(3)(D) defines the term “qualified interest” to mean an interest for which a deduction is allowable under § 2055(a).

In this case, the requirements under § 664(d)(2)(B) and (C) are satisfied under the original terms of Trust. The requirement under § 664(d)(2)(D), that the value (determined under § 7520) of the remainder interest is at least 10 percent of the initial net fair market of all property placed in Trust, was satisfied when Trust was established. Some of the requirements under § 664(d)(2)(A) were not satisfied after the Date 5 Reformation. Trust was not a qualified interest because the payments were not limited to a term of 20 years for Child 7’s Share, as required by § 664(d)(2)(A), and Trust 1 failed to satisfy § 664(d)(2)(A) or fall within any of the situations in Rev. Rul. 2002-20 because Trust did not provide for payments to Trust 1 for the life of Child 1, or name Child 1’s estate as the remainder beneficiary.

However, Trust is a reformable interest under § 2055(e)(3)(C)(i) because a deduction would have been allowable for the remainder interest but for the requirements of § 2055(e)(2). In addition, the noncharitable payments were expressed as a fixed percentage of the net fair market value of the property, as required by § 2055(e)(3)(C)(ii). Therefore, we conclude that Trust meets the requirements of § 2055(e)(3)(C)(i) to have a reformable interest.

We conclude that the Date 7 Reformation is a qualified reformation within the meaning 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, as required under § 2055(e)(3)(B)(i). This determination was made upon review of the computations submitted by Trustees and adjusted by the IRS to reflect the correct value of the charitable interests in Trust. Further, as required under § 2055(e)(3)(B)(ii)(I), the nonremainder interest (before and after the qualified reformation) terminates at the same time. In addition, State Court issued an order approving the reformation of Trust and, pursuant to the order, the Date 7 reformation is effective as of the date of Decedent’s death, as required under § 2055(e)(3)(B)(iii).

Under § 2055(e)(3)(E), the deduction allowed in respect of a qualified reformation may not exceed the deduction which would have been allowable for the reformable interest but for § 2055(e)(2).

Accordingly, based on the information submitted and representations made and, we rule that: (1) the charitable interests passing to Foundation under the terms of Trust, prior to the qualified reformation, are “reformable interests” as described in § 2055(e)(3)(C), (2) the Date 7 Reformation will result in a “qualified reformation” of Trust as described in § 2055(e)(3)(B), and (3) the present value of the remainder interest in Trust and the

present value of Foundation's portion of the unitrust interest, as reformed on Date 7, will be interests that qualify for a deduction under § 2055(a).

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.

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,

Lorraine E. Gardner

Lorraine E. Gardner

Senior Counsel, Branch 4

Office of the Associate Chief Counsel

(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy for § 6110 purposes

cc: