

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-163269-05
Date:
January 18, 2006

Estate =

Decedent =

Charities =

D1 =

Dear :

This responds to a letter dated December 13, 2005, submitted on behalf of Estate by its authorized representative, requesting a ruling under § 691 of the Internal Revenue Code.

The information submitted states that Decedent died on D1, owning a non-qualified deferred annuity contract which had not yet reached its annuity starting date (the Annuity), which Decedent had purchased after October 21, 1979. Decedent had not designated a beneficiary of the Annuity. The executor of Decedent's estate (Estate) represents that under relevant state law, Estate is therefore the beneficiary of the Annuity. The executor of Estate proposes to assign the Annuity to named charities (Charities) designated in Decedent's will (the Will) in partial satisfaction of Charities' shares of the residue of Estate. The Will does not specifically provide that the

executors of Estate shall have the power to make in-kind or non-pro rata distributions, but the executor represents that this power is granted under relevant state law.

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. 2005-30, 2005-20 I.R.B. 1015, holds that if the owner-annuitant of a deferred annuity contract dies before the annuity starting date, and the beneficiary receives a death benefit under the annuity contract, the amount received by the beneficiary in excess of the owner-annuitant's investment in the contract is includible in the beneficiary's gross income as IRD, whether the amount received is in the form of a

lump sum or periodic payments. This holding applies for deferred annuity contracts purchased on or after October 21, 1979.

Based solely on the facts and representations submitted, we conclude that the assignment of the Annuity to Charities in partial satisfaction of their shares of the residue of Estate will not be a transfer within the meaning of § 691(a)(2). Only Charities will include the amounts of IRD in the Annuity in their gross income when the distribution or distributions from the Annuity are received by Charities.

Except as specifically ruled above, we express no opinion concerning the federal tax consequences of the transaction described above under any other provisions of the Code, including whether the Charities are § 501(c)(3) organizations.

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

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

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