

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

Number: **200632013**

Release Date: 8/11/2006

Index Number: 2055.00-00

Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:PSI:B04  
PLR-158108-04

Date:  
April 11, 2006

Re:

LEGEND:

- Decedent -
- Trust -
  
- Date 1 -
- A -
- A's Spouse -
- B -
- Executor -
- Trustee -
- State -
- CRUT -
- Foundation -
- Date 2 -
- Court -
- Date 3 -
- X -
- Y -
- Z - .

Dear :

This is in response to your October 22, 2004 letter and subsequent correspondence submitted by your authorized representative in which you requested rulings regarding the reformation of a trust under § 2055(e)(3) of the Internal Revenue Code.

The facts and representations submitted are summarized as follows: Decedent died on Date 1, a resident of State. Under Article Three of Decedent's will, Decedent bequeathed the residue of her estate to a testamentary trust (Trust) for the lifetime

benefit of three individuals and for charitable purposes.

Pursuant to the terms of Trust under Article Three of Decedent's will, income of Trust is to be divided into two equal shares, one to be distributed to or for the benefit of A (or to A's Spouse if she survives A) and the other to be distributed to B. If both A and A's Spouse pre-decease B, B will receive the entire Trust income for her lifetime. If A survives B, A will receive the entire Trust income for his lifetime. If A's Spouse survives both A and B, she will receive the entire Trust income for her lifetime. Upon the death of the survivor of A, A's Spouse, and B, the Trust income is to be distributed annually to a class of charitable beneficiaries.

Trust does not qualify for the estate tax charitable deduction under § 2055(a) because Trust is not a charitable remainder annuity trust (CRAT) or a charitable remainder unitrust (CRUT) within the meaning of § 664(d)(1) or (d)(2). In order to qualify Trust for the estate tax charitable deduction, on Date 2, which is within 90 days after the last date (including extensions) for filing the Decedent's estate tax return, the Executor of Decedent's estate, who is also the Trustee of Trust, filed a petition in Court to reform the Trust provisions in Decedent's will in order to qualify Trust as a charitable remainder unitrust. No objection was filed by the unitrust beneficiaries or by any governmental entity on behalf of the charitable remainder beneficiaries.

On Date 3, pursuant to Court's order, Article Three of Decedent's will was reformed to create a charitable remainder unitrust (CRUT). The unitrust amount will be equal to 5 percent of the net fair market value of the assets of Trust, valued as of the first day of each taxable year of Trust. In each taxable year of Trust during the unitrust period, the Trustee shall distribute X percent of the unitrust amount, in equal shares, (i) to B for her lifetime and (ii) to A for his lifetime or, if A should predecease his Spouse, to A's Spouse for her lifetime (A and A's Spouse being deemed to be a single beneficiary for this purpose). Upon the death of one beneficiary (A and A's Spouse being deemed to be a single beneficiary for this purpose), Trustee shall distribute the entire X percent of the unitrust amount to the survivor for his or her lifetime. In each taxable year of Trust during the unitrust period, the remaining Y percent of the unitrust amount is to be paid to one or more organizations described in §§ 170(c) and 2055(a) of the Internal Revenue Code, as the Trustee shall select in the Trustee's sole discretion.

Under the reformation, the first day of the unitrust period is the date of Decedent's death, and the last day of the unitrust period is the date of the survivor beneficiary's death. The unitrust amount is to be paid in equal quarterly installments at the end of each calendar quarter and shall be paid from income or, to the extent income is not sufficient, from principal. Any income of Trust for a taxable year in excess of the unitrust amount shall be added to principal. If, for any year, the net fair market value of the Trust assets is incorrectly determined, then, within a reasonable period after the correct value is finally determined, the Trustee shall pay to the unitrust recipients (in the case of an under valuation) or receive from the unitrust recipients (in the case of an over

valuation) an amount equal to the difference between the unitrust amounts properly payable and the unitrust amounts actually paid.

At the termination of the unitrust period, the Trustee is to distribute the trust estate to a separate charitable trust, Foundation, and to cause such charitable trust to obtain a determination letter from the Internal Revenue Service recognizing it as a charitable foundation described in § 501(c)(3) of the Code.

The Executor of Decedent's estate requests the following rulings: (1) that the reformation is a qualified reformation under § 2055(e)(3); and (2) that as a result of the qualified reformation, the Decedent's estate will be entitled to an estate tax charitable deduction under § 2055(a) for the present value of the remainder interest passing to charity. In addition, a request is made for the present value factor for determining the present value of the remainder interest subject to the three measuring lives.

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 initial net fair market value of all property placed in trust) is to be paid, not less frequently 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 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, for purposes of the federal estate tax, 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 charitable, religious, scientific, literary, or educational organizations described in § 2055(a)(1) through 2055(a)(4).

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) provides for the reformation of interests to comply with the requirements of § 2055(e)(2). 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.

Section 2055(e)(3)(C)(i) defines the term "reformable interest" to mean any interest for which a deduction would be allowable under section 2055(a) at the time of the decedent's death but for section 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.

Section 2055(e)(3)(C)(iii) provides, in part, that section 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 section 2055(a).

In this case, the charitable remainder interests constitute reformable interests under section 2055(e)(3)(C)(i) because as originally drafted, Trust provided for charitable remainder interests that were presently ascertainable and, hence, severable from the noncharitable interests. Prior to the enactment of § 2055(e)(2), such interests would have been deductible under § 2055(a). See § 20.2055-2(a) of the Estate Tax Regulations. Although the payments to A (or A's Spouse) and B were not expressed in specified dollar amounts or a fixed percentage of the fair market value of the property as required by § 2055(e)(3)(C)(ii), a judicial proceeding was commenced, as provided under § 2055(e)(3)(C)(iii), before the 90th day after the last date (including extensions) for filing Decedent's estate tax return.

Further, the reformation satisfies the requirement of section 2055(e)(3) because (1) the difference between the actuarial value (determined as of the date of the Decedent's death) of the qualified interest and 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; (2) the nonremainder interest terminates at the same time both before and after the reformation; and (3) the reformation is effective as of the date of Decedent's death.

Accordingly, based on the information submitted and representations made, we conclude that the reformation of Trust, as described above, will be a qualified reformation within the meaning of § 2055(e)(3), provided the reformation is effective under local law. Therefore, an estate tax charitable deduction will be allowable under § 2055(a) for the present value of the charitable remainder interests in reformed Trust, determined under § 20.2055-2(f)(2)(i). The present value factor for determining the present value of the remainder interest subject to the three measuring lives is Z.

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.

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.

This ruling is directed only to the taxpayer(s) 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.

Sincerely,

Katherine A. Mellody  
Senior Technician Reviewer  
Branch 4  
(Passthroughs and Special  
Industries)

Enclosures  
Copy for 6110 purpose

cc: