

**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:B09

PLR-145240-04

Date:

August 11, 2005

LEGEND

- Decedent =
- Trust =
- Individual 1 =
- Individual 2 =
- Individual 3 =
- Individual 4 =
- Charity =
- Date 1 =
- State =
- Date 2 =
- Attorney 1 =
- Date 3 =
- Date 4 =
- Date 5 =
- Attorney 2 =
- Date 6 =
- State Court =
  
- Date 7 =

Dear :

This is in response to your authorized representative's letter dated August 9, 2004, requesting certain rulings regarding a proposed reformation of a testamentary trust.

The facts and representations made are summarized as follows: During her lifetime, Decedent created Trust, an inter vivos revocable trust that became irrevocable upon Decedent's death.

Paragraph 1.05 of Trust sets forth the manner of distribution of the trust estate after Decedent's death. Paragraph 1.5 provides generally that after certain bequests, the trustee is to distribute certain amounts of trust income to Individual 1, Individual 2, Individual 3, and Individual 4.

Paragraph 1.06 provides that upon the death of the last to die of Individual 1, Individual 2, Individual 3, and Individual 4, the trust shall terminate and the trustee shall pay over the balance of the trust estate to Charity.

On Date 1, Decedent died a resident of State. On Date 2, the trustees of Trust engaged Attorney 1 to assist with the administration of Decedent's estate and to prepare Decedent's Form 706, Federal Estate (and Generation-Skipping Transfer) Tax Return. The Form 706 was due on Date 3. Attorney 1 filed Decedent's Form 706 on Date 4, approximately two and a half months after the due date for filing the return.

On or about Date 5, the trustees of Trust terminated their relationship with Attorney 1 and engaged Attorney 2 to assist them in the administration of Decedent's estate.

On Date 6, Attorney 2 filed a petition with State Court to reform Trust so that the remainder interest held by charity would qualify for the federal estate tax charitable deduction. The petition for reformation was filed approximately three months after the statutory deadline set forth in § 2055(e)(3)(C)(iii)(I) for the timely commencement of a reformation action.

Decedent's estate now requests the following rulings:

1. Relief be granted under § 301.9100-3 of the Procedure and Administration Regulations with respect to the time for commencing a judicial reformation under § 2055(e)(3)(c)(iii);
2. The charitable remainder interest in Trust constitutes a reformable interest within the meaning of § 2055(e)(3)(C);
3. The difference between the actuarial value of the qualified remainder interest and the actuarial value of the reformable remainder interest does not exceed five percent of the actuarial value of the reformable remainder interest as required under § 2055(e)(3)(B);
4. The reformation and amendment of Trust under the court order is a qualified reformation for purposes of § 2055(e)(3) with respect to the

residual portion of Trust set aside as a charitable remainder unitrust, and as a result of that reformation and amendment, the estate is entitled to a federal estate tax charitable deduction for the interest in the residual portion of the trust set aside as a charitable remainder unitrust;

5. No beneficiary of the trust will be treated as having sold or exchanged an interest in the trust under § 1001 as a consequence of any provision of the reformation of the trust;
6. No beneficiary of the trust will be treated as having made a gift under either chapter 12, relating to gifts, or chapter 13, relating to generation-skipping transfer, as a consequence of any provision of the reformation of 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 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, or transfers to or for the use charitable, religious, scientific, literary, or educational organizations described in §§ 2055(a)(1) – (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 which passes or has passed to the person, or for the 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, 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) provides that for purposes of § 2055(e), the term "qualified reformation" means a change of a governing instrument by reformation, amendment, construction, or otherwise which 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) such 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 § 2055(a) at the time of the decedent's death but for the split-interest rules of § 2055(e)(2). Under § 2055(e)(3)(C)(ii) 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)(I) provides that the restriction in § 2055(e)(3)(C)(ii) does not apply to any interest if a judicial proceeding is commenced to change such interest into a qualified interest not later than the 90th day after the last date (including extensions) for filing an estate tax return, if an estate tax return is required to be filed.

Section 301.9100-1(b) of the Procedure and Administration Regulations provides that the term "election" includes an application for relief in respect of tax; a request to adopt, change, or retain an accounting method or accounting period; but does not include an application for an extension of time for filing a return under § 6081.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute). Under § 301.9100-1(b), a statutory election means an election whose due date is prescribed by statute.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

In the instant case, the due date for filing Decedent's Form 706 was Date 3. Attorney 1 did not request an extension of time to file the Form 706 and did not actually file the Return until Date 4, which was approximately two and a half months after the due date for filing the return. Section 2055(e)(3)(C)(iii)(I) requires that a judicial proceeding to convert a reformable interest into a qualified interest must be commenced not later than the 90th day after the last date (including extensions) for filing an estate tax return, if an estate tax return is required to be filed. Because no extension of time was requested with regard to Decedent's Form 706, the deadline for commencing a judicial proceeding to reform Trust was Date 7. The petition for reformation, however, was not filed until Date 6.

Discretionary relief is available under § 301.9100-3 for regulatory elections, but not for statutory elections. A statutory election is defined under § 301.9100-1(a) as an election whose due date is prescribed by statute. The deadline for commencing a judicial proceeding pursuant to § 2055(e)(3)(c)(iii) is prescribed by statute. Thus, we conclude that relief is not available under § 301.9100-3 for an extension of time to commence a judicial reformation under § 2055(e)(3)(c)(iii). In light of the foregoing, the remaining rulings requested on behalf of Decedent's estate are moot.

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.

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.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) 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,

Heather C. Maloy  
Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosure

Copy for 6110 purposes

cc: