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Internal Revenue Service

Department of the Treasury

Washington, DC 20224

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Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:P&SI:Br.7-PLR-114295-98

Date: MAR 3 0 1999

In Re:

Legend:

Trust:

Trustees:

Trust Agreement:

Decedent:

Trust Beneficiary:

Charity 1:

Charity 2:

Court:

Reformed Trust:

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a:

b:

c:

d:

e:

f:

g:

h:

We received your letter requesting rulings concerning the application of § 2055(e)(3) of the Internal Revenue Code to the proposed reformation of Trust. Specifically, you request rulings that:

1. The reformation of Trust is a qualified reformation for purposes of § 2055(e)(3);

2. Reformed Trust will qualify as a charitable remainder unitrust described under § 664; and

3. The interest passing to the charities under the charitable remainder unitrust will be deductible by Decedent's estate under § 2055(a).

The facts and representations submitted are summarized as follows: Decedent amended and restated Trust Agreement on a. Decedent died on b.

Article IV of Trust Agreement provides for the distribution and disposition of Trust property upon the death of Decedent. Article IV, paragraph C of Trust Agreement establishes a charitable remainder unitrust.

Decedent intended that the trust created under Article IV, paragraph C of Trust Agreement qualify as a charitable remainder unitrust as described in § 664(d)(2).

Under Article IV, paragraph C of Trust Agreement, if Decedent is survived by Trust Beneficiary, the undistributed Trust property remaining after the disbursements and distributions provided for in Article III and Article IV, paragraphs A and B of Trust Agreement shall continue to be held in trust for the benefit of Trust Beneficiary. Trust Beneficiary is to receive a unitrust amount equal to c percent of the net fair market value of trust assets valued as of the first day of each taxable year of the Trust. The unitrust amount shall be paid from income in as nearly equal installments as possible, but in any event not less often than annually, and to the extent that income is not sufficient, then from principal.

Article IV, paragraph C of Trust Agreement also provides that, upon the death of Trust Beneficiary, the trust created under Article IV, paragraph C shall terminate. Further, Article IV, paragraph C of Trust Agreement provides that, upon termination of the Article IV, paragraph C trust, Trustee is to distribute certain specified trust assets to Charity 1 and other specified trust assets to Charity 2, and the remaining trust assets are to be distributed in equal shares to Charity 1 and Charity 2 (collectively referred to as Charities).

Trustees were concerned that the trust created under Article IV, Paragraph C of Trust Agreement did not contain all of the technical requirements set forth in § 664 and § 2055(e). On d, Trustees petitioned Court to reform Article IV, paragraph C of Trust Agreement to ensure that the trust created under Article IV, paragraph C of Trust Agreement is a charitable remainder unitrust as described in § 664(d)(2) effective as of b.

The charitable remainder unitrust described in Article IV, paragraph C of Trust Agreement (as reformed) contains provisions that are substantially similar to the actual language of §§ 6 and 8 of Rev. Proc. 90-30, 1990-1 C.B. 534. After the proposed reformation, in each tax year of Reformed Trust, Trustee shall pay to Trust Beneficiary a unitrust amount equal to c percent of the net fair market value of the assets of Reformed Trust valued as of the first day of each tax year of Reformed Trust. The unitrust amount shall be paid in equal quarterly installments from income and, to the extent that income is not sufficient, from principal, at the end of the period for which the payment is made. Any trust income for a tax year in excess of the unitrust amount shall be added to principal.

The fair market value of the assets of the Reformed Trust, as of the first day of each taxable year shall be fixed and determined by the then acting Trustees. In any case where the net fair market value of the unitrust is incorrectly determined than, within a reasonable period after the value is finally determined for federal tax purposes, the Trustee shall pay to the recipient Trust Beneficiary (in the case of an undervaluation) or receive from the recipient Trust Beneficiary (in the case of an

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

In determining the unitrust amount, the Trustee shall prorate the same on a daily basis for a short taxable year and for the taxable year ending with recipient Trust Beneficiary's death.

The obligations to pay the unitrust amount commence on the date of Decedent's death, but payment of the unitrust amount may be deferred until the end of the tax year of Reformed Trust in which occurs the complete funding of Reformed Trust. Within a reasonable time after the end of the taxable year in which complete funding of the trust occurs the Trustee must pay to the recipient (in the case of an underpayment) or receive from the recipient (in the case of an overpayment) the difference between: (1) any unitrust amounts actually paid, plus interest, compounded annually, computed for any period at the rate of interest that the federal income tax regulations under § 664 prescribe for the trust for such computation for such period; and (2) the unitrust amounts payable, plus interest, compounded annually, computed for any period at the rate of interest that the federal income tax regulations under § 664 prescribe for the trust for such computation for such period.

Upon the death of Trust Beneficiary, Reformed Trust will terminate, and principal and income of Reformed Trust will be distributed to Charities as follows: e percent to Charity 1 and f percent to Charity 2. If either Charity 1 or Charity 2 is not an organization described in §§ 170(c), 2055(a), and 2522(a), at the time when any principal or income of Reformed Trust is to be distributed to it, then Trustee shall distribute such principal and income to one or more organizations selected by Trustee that are described in §§ 170(c), 2055(a), and 2522(a) and engaged in activities that are reasonably comparable to those conducted or supported by Charities at Decedent's death.

Section 2055(a) provides that 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 a corporation or certain other organizations organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes.

Section 2055(e)(2)(A) provides that where an interest in property 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 that 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 is allowed under § 2055(a) for the interest that passes or

has passed to the person, or for a use, described in § 2055(a), unless in the case of a remainder interest, the interest is in a charitable remainder annuity trust or a charitable remainder unitrust (described in § 664) or a pooled income fund (described in § 642(c)(5)).

Section 2055(e)(3)(A) provides that a deduction is allowed under § 2055(a) for 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 § 2055(a) at the time of the decedent's death but for § 2055(e)(2).

Section 2055(e)(3)(C)(ii) provides that generally 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 § 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).

Rev. Proc. 90-30, 1990-1 C.B. 534, provides that trusts containing language that substantially follows one of the sample forms of trust contained in that Revenue Procedure will be recognized by the Service as meeting all of the requirements of a charitable remainder unitrust, provided that the trust operates in a manner consistent with the terms of the instrument creating the trust and provided it is a valid trust under local law.

Based on the information submitted and the representations made, the interest passing to Charities under Trust is a reformable interest within the meaning of § 2055(e)(3)(C)(i) because an estate tax deduction for the value of the remainder interest would have been allowable under § 2055(a) but for the provisions of § 2055(e). In addition, the judicial proceedings to reform Trust were commenced before the 90th day after the last date (including extensions) for filing Decedent's estate tax return. Reformed Trust contains the provisions set forth in Rev. Rul. 72-395, 1972-2 C.B. 340, as modified by Rev. Rul. 80-123, 1980-1 C.B. 205, and Rev. Rul. 82-128, 1982-2 C.B. 71, and clarified by Rev. Rul. 82-165, 1982-2 C.B. 117. Trust's nonremainder interest terminates at the same time before and after the reformation. Further, the actuarial value of the charitable remainder interest in Trust before the proposed reformation (based on the assumption that all trust income would be distributable to the Trust Beneficiary) was g and the actuarial value of the charitable remainder interest in Reformed Trust is h. 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.

Accordingly, we conclude that the proposed reformation of Trust is a qualified reformation under § 2055(e)(3) and that Reformed Trust meets the requirements of a charitable remainder unitrust as described in § 664(d)(2). Therefore, the present value of the remainder interest in Reformed Trust will be allowed as an estate tax deduction under § 2055(a). Further, the reformation of Trust will be effective as of the date of Decedent's death.

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.

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

A copy of this letter must be attached to any income tax return to which it is relevant.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to the taxpayer.

Sincerely yours,

Christine E. Ellison
Chief, Branch 7
Office of the Assistant Chief Counsel
(Passthroughs and Special Industries)

Enclosure (1)