

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:2 - PLR-116551-00

Date:

August 6, 2001

Decedent =

Wife =

D1 =

Child 1 =

Child 2 =

Child 3 =

State =

Will =

Estate =

IRA 1 =

IRA 2 =

X =

Y =

Dear :

This letter responds to a letter dated August 21, 2000, and subsequent correspondence, submitted on your behalf by your authorized representative, requesting rulings under §§ 643, 661, 662, and 663(c) of the Internal Revenue Code with regard to the

distribution of IRA monies from Decedent's estate.

The information submitted states that on D1, Decedent died, survived by Wife, Child 1, Child 2, and Child 3. Will was duly admitted to probate in State.

Article Third of Will provides that Decedent gives, devises, and bequeaths to Child 1, Child 2, and to Trustee for the benefit of Child 3 upon the terms and conditions set forth in Article Fourth, to share equally, the largest amount, if any, which can pass free of federal estate tax under Will by reason of the credit ("unified credit") described in § 2010 of the Code, which shall be in effect for the year of Decedent's death, and the state death tax credit (provided that use of this credit does not require an increase in the state death taxes payable by reason of decedent's death). However, if the residual amount under Article Fifth is less than the spousal right of election under the law of State, the value of the bequests to Child 1, Child 2 and Trustee for the benefit of Child 3, shall be reduced accordingly to allow the residual amount under Article Fifth, to the extent possible, to be equal to the aforementioned spousal right of election.

Article Fourth of Will provides that Decedent gives, devises, and bequeaths to trustee, the trust amount, as set forth in Article Third to be held in trust. The trustee shall pay to Child 3, the income from the trust for her support, education, and maintenance. When Child 3 attains the age of twenty five years, the trust for her benefit shall cease and the trustee shall pay over to her absolutely the principal and interest, if any.

Article Fifth of Will provides that all the rest, residue and remainder of decedent's estate, both real and personal, of every kind and description and wheresoever situated, decedent gives, devises and bequeaths to Wife.

Article Seven of Will appoints Wife as executrix of Will.

Article Eight of Will, paragraph (d), provides that without limitation of the powers conferred upon the executrix by statute or by general rules of law, executrix is specifically authorized and empowered to make distributions in cash or in kind upon any division of decedent's estate.

As of the date of Decedent's death, the amount payable to Child 1, Child 2, and Trustee for the benefit of Child 3, was not ascertainable. Rather, the amount is dependent on a number of factors which include: the federal unified credit; State estate taxes which will reduce the size of the bequest; administration expenses that are charged to principal but are not deductible for estate tax purposes; and Wife's elective share. Wife's elective

share under State law may exceed the residuary (which in this case it did), resulting in a reduction of the bequest. Wife's elective share under State law equals the greater of (a) \$50,000 or (b) one-third of the net estate. In determining the value of the spousal right of election under State law, Decedent's net estate must first be determined. In order to determine a decedent's net estate, Decedent's probate estate and certain non-probate assets must be totaled and then reduced by debts, administration expenses and reasonable funeral expenses, but all estate taxes are disregarded. Therefore, under these circumstances, the bequest is not ascertainable as of the date of Decedent's death.

Included in Decedent's estate as of D1 is IRA 1 with a then value of \$x and IRA 2 with a then value of \$y. IRA 1 and IRA 2 are payable to Estate.

Wife, acting in her capacity as executrix of Estate (Executrix) intends to withdraw funds from Decedent's IRAs and have the proceeds paid to Estate. Executrix will then exercise her discretion granted under Will in allocating IRA proceeds to satisfy the bequests in Article Third and Article Fifth. Executrix intends to pay Wife's share out of IRA monies. In accordance with a ruling previously issued to Wife by the Service, Wife intends to roll over a portion of the IRA monies from Estate to her IRA.

Section 643(a) provides that the term distributable net income (DNI) means, with respect to any taxable year, the taxable income of the estate or trust with certain modifications as provided in § 643(a)(1),(2),(3),(4),(5),(6), and (7).

Section 661(a) provides that a deduction is allowed in computing the taxable income of an estate for a given taxable year with respect to any amounts properly paid or credited or required to be distributed for said taxable year to the extent that the deduction does not exceed the distributable net income of the estate.

Section 662(a) provides that subject to § 662(b), there shall be included in the gross income of a beneficiary to whom an amount specified in § 661(a) is paid, credited, or required to be distributed (by an estate or trust described in § 661), the sum of the following amounts: (1) The amount of income for the taxable year required to be distributed currently to such beneficiary, whether distributed or not. If the amount of income required to be distributed currently to all beneficiaries exceeds the distributable net income (computed without the deduction allowed by § 642(c), relating to deduction for charitable, etc. purposes) of the estate or trust, then, in lieu of the amount provided in the preceding sentence, there shall be included in

the gross income of the beneficiary an amount which bears the same ratio to distributable net income (as so computed) as the amount of income required to be distributed currently to such beneficiary bears to the amount required to be distributed currently to all beneficiaries. For purposes of this section, the phrase "the amount of income for the taxable year required to be distributed currently" includes any amount required to be paid out of income or corpus to the extent such amount is paid out of income for such taxable year. (2) All other amounts properly paid, credited, or required to be distributed to such beneficiary for the taxable year. If the sum of (A) the amount of income for the taxable year required to be distributed currently to all beneficiaries, and (B) all other amounts exceeds the distributable net income of the estate or trust, then, in lieu of the amount provided in the preceding sentence, there shall be included in the gross income of the beneficiary an amount which bears the same ratio to distributable net income (reduced by the amounts specified in § 662(a)(2)(A)) as the other amounts properly paid, credited or required to be distributed to the beneficiary bear to the other amounts properly paid, credited, or required to be distributed to all beneficiaries.

Section 663(a)(1) provides that an amount which, under the terms of the governing instrument, is properly paid or credited as a gift or bequest of a specific sum of money or of specific property and which is paid or credited all at once or in not more than 3 installments shall not be included as amounts falling within § 661(a) or § 662(a).

Section 1.663(a)-1(b)(1) of the Income Tax Regulations provides that in order to qualify as a gift or bequest of a specific sum of money or of specific property under § 663(a), the amount of money or the identity of the specific property must be ascertainable under the terms of a testator's will as of the date of his death, or under the terms of an inter vivos trust instrument as of the date of the inception of the trust.

Section 663(b)(1) provides that if within the first 65 days of any taxable year of an estate or a trust, an amount is properly paid or credited, such amount shall be considered paid or credited on the last date of the preceding tax year.

Section 663(b)(2) provides that § 663(b)(1) shall apply with respect to any taxable year of an estate or a trust only if the executor of such estate or the fiduciary of such trust (as the case may be) elects, in such manner and at such time as the Secretary prescribes by regulations to have § 663(b)(1) apply for such taxable year.

Section 663(c) provides that for the sole purpose of determining the amount of distributable net income in the

application of §§ 661 and 662, in the case of a single trust having more than one beneficiary, substantially separate and independent shares of different beneficiaries in the trust shall be treated as separate trusts. Similar rules shall apply to treat substantially separate and independent shares of different beneficiaries in an estate having more than 1 beneficiary as separate estates. The existence of such substantially separate and independent shares of different beneficiaries and manner of treatment as separate trusts or estates, shall be determined in accordance with regulations prescribed by the Secretary.

Decedent died after the effective date of § 663(c) (with respect to its application to estates) but prior to the effective date, December 28, 1999, of regulations promulgated under § 663(c), § 1.663(c) (with respect to their application to estates). Section 1.663(c) provides that for estates, with respect to decedents who died on or after the date that § 1307 of the Tax Reform Act of 1997 became effective but before December 28, 1999, the IRS will accept any reasonable interpretation of the separate share provisions, including those that were provided in the proposed regulations under § 663(c) (1999-1 C.B. 770). In accordance with the ruling previously issued to Wife by the Service, Executrix will fund Wife's residuary share with Estate's IRA proceeds. Upon receipt, Wife will roll over the IRA proceeds to her IRA. As Decedent died prior to the effective date of § 1.663(c) (with respect to their application to estates), the Executrix's exercise of her discretion, specifically granted to her by Will, in making distributions from Estate shall be treated as a reasonable interpretation of the separate share provision.

IRA proceeds received by Estate from IRA 1 and IRA 2 for a given taxable year of Estate are included in the gross income of Estate for said year. The gross income portion of the IRA proceeds enter into the computation of DNI as defined in § 643(a) with respect to the taxable year of Estate in which IRA proceeds are received.

The bequest to Child 1, Child 2, and Trustee in trust for the benefit of Child 3, is in the form of a pecuniary formula bequest and the amount cannot be ascertained as of the date of Decedent's death. Therefore, the bequest to Child 1, Child 2, and Trustee in trust for the benefit of Child 3 is not a specific sum of money under § 663(a)(1).

Because the bequest is not a specific sum of money under § 663(a)(1), the gross income portions of the IRA proceeds distributed under Article Third of Will to Child 1, Child 2, and Trustee in trust for the benefit of Child 3, are included in Estate's DNI and are deductible by Estate under § 661 for a given taxable year to the extent that Estate has DNI for said taxable

year with respect to which said distributions are made provided that said distributions are made within 65 days after the close of said taxable year of Estate and Executrix makes a timely election for such taxable year under § 663(b).

The beneficiaries under Article Third of Will, Child 1, Child 2, and Trustee in trust for the benefit of Child 3, must include in gross income the distributions made to the beneficiaries by Estate, as provided by § 662.

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 who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to Executrix's and beneficiaries' attorneys.

Sincerely yours,
J. THOMAS HINES
Chief, Branch 2
Office of the Associate
Chief Counsel
(Passthroughs and
Special Industries)

Enclosures: 2
Copy of this letter
Copy for § 6110 purposes