

Internal Revenue Service

Index No.: 2055.12-07, 2055.12-10
Number: **199952044**
Release Date: 12/30/1999

Department of the Treasury

Washington, DC 20044

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CC:DOM:P&SI:7 - PLR-105087-99

Date:

September 30, 1999

LEGEND:

Taxpayer =

Trust =

a =

b =

A =

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Dear

In a letter dated, February 25, 1999, you requested rulings under § 2055 of the Internal Code. This letter responds to your request.

The information submitted and representations made are summarized as follows: Taxpayer created the Trust on a. The Trust was amended and restated on b. Item First of the Trust provides that during Taxpayer's lifetime, the trustee is to pay to Taxpayer the net income and so much of the principal as Taxpayer may from time to time request in writing. Alternatively, the disinterested trustee may use the income and/or principal for Taxpayer's comfort, support, and health care if the trustee believes that conditions warrant such action.

Item Second of the Trust provides that on Taxpayer's death, all remaining principal is to be held and distributed under the provisions of the charitable lead trust established under Article Third of the trust.

Item Third D (1) of the Trust provides that in each taxable year of the Trust term, except as provided in subparagraph (2) of Article Third D, the trustees are to pay (in cash, in kind, or partly in each), to A or, if A does not exist or does not qualify under §§ 170(c) and 2055(a) at the time any payment is to be made to it, to such organizations as the trustees in their discretion direct (provided such organizations do so qualify), a guaranteed annuity interest equal to c percent of the initial fair market value of the assets constituting the Trust; provided, however, that if Taxpayer dies after d, the guaranteed annuity shall be equal instead to e percent of the initial fair market value of the assets constituting the Trust. In determining that value, assets are to be valued at their values as finally determined for federal tax purposes. If the initial fair market value of the Trust assets is incorrectly determined by the trustees, then within a reasonable period after the correct determination, the trustee is to pay the charitable beneficiary in the case of an undervaluation or receive from the beneficiary in the case of an overvaluation an amount equal to the difference between the guaranteed annuity properly payable and the amount actually paid. The guaranteed annuity interest is to be paid in equal quarterly installments on the last day of each quarter, first from ordinary income (excluding unrelated business income), then from short-term capital gain, then from long-term capital gain, then from unrelated business income, then from tax-exempt income, and to the extent that the foregoing items for the taxable year are insufficient, from principal. Any income of the trust for the taxable year above the guaranteed annuity interest is to be added to principal. The trustees' obligation to make payments is limited to the Trust assets. Notwithstanding any existing or hereafter enacted state law, no amount may be paid to or for the use of any person other than an organization described in §§ 170(c) and 2055(a). However, an amount is not deemed to be so paid if the amount is paid for full consideration.

Item Third D(2) of the Trust provides that in a taxable year which is for a period of less than 12 months (other than a taxable year in which the Trust term ends) the guaranteed annuity interest that must be distributed under subparagraph (1) of Item Third D is to be an amount multiplied by a fraction, the numerator of which is the number of days in the taxable year of the Trust and the denominator of which is 365 (366 if February 29 is a day included in the numerator). For the taxable year in which the Trust term ends, the guaranteed annuity interest that must be distributed under subparagraph (1) of Item D is such amount multiplied by a fraction, the numerator of which is the number of days in the period beginning on the first day of the taxable year and ending on the last day of the Trust term, and the denominator of which is 365 (366 if February 29 is a day included in the numerator).

Item Third D(3) of the Trust provides that the obligation to pay the guaranteed annuity interest commences with the date of Taxpayer's death, but the payment may be deferred from that date to the end of the taxable year of the Trust in which occurs the complete funding of the Trust. Within a reasonable period after that time, the trustees are to pay, in the case of underpayment, or are to receive from the charitable beneficiary, in the case of an overpayment, the difference between any amounts actually paid to the charitable beneficiary, plus interest on those amounts compounded annually. If the United States Treasury has not specified a rate of interest, the rate of interest is to be the rate then used in the United States Treasury tables for valuing a charity's interest in a guaranteed annuity interest. The amounts payable are to be retroactively determined by using the Trust's taxable year, valuation method, and valuation date.

Item Third D(4) of the Trust provides that at the end of the Trust term the trustees are to add the income of the Trust, other than any amount due the charity, to the principal and distribute it under Item Sixth of the Trust.

Item Third E of the Trust provides that no additional contributions may be made to the Trust by any person.

Item Fifth of the Trust provides that it is Taxpayer's intent to obtain the full benefit of the estate tax charitable deduction to which Taxpayer's estate is entitled and to qualify the Trust in Item Third as a guaranteed annuity interest under § 2055(e)(2)(B) and the regulations thereunder. Accordingly, the Trust is to be interpreted, valued, managed, invested, administered, and in all other respect governed consistent with Taxpayer's intent. Without limiting the generality of the foregoing and except for the payment of the guaranteed annuity interest, the trustees are prohibited from engaging in any act of self-dealing as defined in § 4941; from retaining any excess business holdings that would subject the trust to tax under § 4943; from making any investments that would subject the trust to tax under § 4944; and from making any taxable expenditures as defined in § 4945. Further, the trustees are to make distributions at such time and in such manner as to avoid the tax under § 4942. In exercising the general powers granted under the following provisions of the Trust instrument, the

trustees are to be subject to the specific prohibitions in this Item with respect to the Trust created under Items Third and Fourth, and in the event of any conflict, the specific provisions herein are to govern.

Article Fifth of the Trust further provides that nothing in the Trust instrument is to be construed to restrict the trustees from investing the Trust assets in a manner that could result in the annual realization of a reasonable amount of income or gain from the sale or disposition of Trust assets. The trustees are to have the power to amend the Trust for the sole purpose of complying with the requirements of the Code and the regulations thereunder.

Article Sixth of the Trust provides that after the termination of the Trust in Item Third, the trustees are to divide the principal into as many equal, separate trusts as there are children of Taxpayer then living and children then dead represented by then living issue.

You have requested the following rulings:

(1) The Trust satisfies the requirements of a guaranteed annuity interest under § 2055(e)(2)(B) and § 20.2055-2(e)(2)(vi) of the Estate Tax Regulations; and

(2) Taxpayer's estate will be entitled to a federal estate tax deduction under § 2055(a) equal to 100 percent of the amount passing to the trust at Taxpayer's death.

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 imposed by § 2001, the value of the taxable estate is determined by deducting from the value of the gross estate all bequests to or for the use of certain governmental entities, certain corporations organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, and certain other fraternal and veterans organizations.

Section 2055(e)(2)(B) 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 that is extinguished on 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 the use, described in § 2055(a) unless in the case of any interest other than a remainder interest, the 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 20.2055-2(a) of the Estate Tax Regulations provides that if a trust is created or property is transferred for both a charitable and a private purpose, deduction may be taken of the value of the charitable beneficial interest only insofar as that interest is presently ascertainable, and hence severable from the noncharitable interest.

Section 20.2055-2(e)(1) provides that in the case of decedents dying after December 31, 1969, where an interest in property passes or has passed from that decedent for charitable purposes and an interest (other than an interest that is extinguished on the decedent's death) in the same property passes or has passed from the decedent for private purposes (for less than an adequate and full consideration in money or money's worth) after October 9, 1969, no deduction is allowed under § 2055 for the value of the interest that passes or has passed for charitable purposes unless the interest is a deductible interest described in § 20.2055-2(e)(2).

Section 20.2055-2(e)(2)(vi)(a) provides that a deductible interest for purposes of § 20.2055-2(e)(1) is a charitable interest in property where the charitable interest is a guaranteed annuity interest, whether or not the interest is in trust. For purposes of § 20.2055-2(e)(2)(vi), the term "guaranteed annuity interest" means the right pursuant to the instrument of transfer to receive a guaranteed annuity. A guaranteed annuity is an arrangement under which a determinable amount is paid periodically, but not less often than annually, for a specified term or for the life or lives of an individual or individuals, each of whom must be living at the date of the death of the decedent and can be ascertained at such date. An amount is determinable if the exact amount that must be paid under the conditions specified in the instrument of transfer can be ascertained as of the appropriate valuation date.

Section 20.2055-2(e)(2)(vi)(b) provides that a charitable interest is a guaranteed annuity interest only if it is a guaranteed annuity interest in every respect.

Section 20.2055-2(e)(2)(vi)(d) provides that where a charitable interest in the form of a guaranteed annuity interest is in trust, the governing instrument of the trust may provide that income of the trust that is in excess of the amount required to pay the guaranteed annuity interest is to be paid over for the use of a charity. Nevertheless the amount of the deduction is limited to the fair market value of the guaranteed annuity interest as determined under § 20.2055-2(f)(2)(iv).

Under § 20.2055-2(e)(2)(vii)(a), the term "deductible interest" includes a unitrust interest. The term "unitrust interest" means the right pursuant to the instrument of transfer to receive payment, not less often than annually, of a fixed percentage of the net fair market value, determined annually, of the property which funds the unitrust interest.

Section 20.2055-2(f)(1) provides that the amount of the deduction in the case of a contribution of a partial interest in property to which this section applies is the fair market value of the partial interest at the appropriate valuation date, as defined in

§ 20.2055-2(e)(2)(vi)(h). The fair market value of an annuity, life estate, term for years, remainder, reversion, or unitrust interest is its present value.

Section 20.2055-2(f)(2) provides that the present value of a unitrust interest described in § 20.2055-2(e)(2)(vii) is to be determined by subtracting the present value of all interests in the transferred property other than the unitrust interest from the fair market value of the transferred property.

Based on the information submitted and the representations made, we conclude that the trust satisfies the requirements of a guaranteed annuity interest under § 2055(e)(2)(B) and § 20.2055-2(e)(2)(vi). Accordingly, on Taxpayer's death, Taxpayer's estate will be entitled to a federal estate tax deduction under § 2055(a) for the present value of the guaranteed annuity interest, determined in accordance with § 20.2055-2(f)(2)(iv).

Except as ruled above, we express or imply no opinion concerning the federal tax consequences of this transaction under the cited provisions of the Code or any other provision of the Code.

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

In accordance with the power of attorney on file with this office, we are sending a copy of this letter to Taxpayer.

Sincerely yours,

Joseph H. Makurath

Joseph H. Makurath
Senior Technician Reviewer, Branch 7
Office of the Assistant Chief Counsel
(Passthroughs and Special Industries)