

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:B02

PLR-147931-04

Date:

March 22, 2005

X =

Trust =
1

Trust =
2

Estate =

D1 =

Dear :

This letter responds to your letter dated July 30, 2004, and subsequent correspondence, submitted by you as trustee of Trust 1 and Trust 2 (collectively, the Trusts) and executor of the Estate, requesting rulings under §§ 642 and 691 of the Internal Revenue Code.

The information submitted states that X, who died on D1, was the grantor during life of Trust 1 and Trust 2. X's will provides that X's assets subject to probate shall be added to Trust 2 and distributed according to its terms. X was the owner of assets including Series E and EE United States savings bonds (the Bonds) and individual retirement accounts (the IRAs). The beneficiary of each of the IRAs is either Trust 1 or Trust 2. The Trusts each provide that the trustee may make distributions in cash or in kind, without being required to make pro rata distributions.

The Trusts each provide that the residue remaining after the payment of taxes, expenses, and certain pecuniary and specific bequests shall pass to certain named charitable organizations represented as being organizations described in § 170(c) (the Charities). The trustee proposes to fund these residuary bequests with the Bonds and the IRAs. The Bonds will be surrendered by Trust 2 and the proceeds distributed to the Charities. Some of the IRAs will be surrendered and the proceeds distributed to the Charities. Other IRAs will be assigned to the Charities in satisfaction of their residuary shares of the Trusts.

Section 691(a)(1) of the Code provides that the amount of all items of gross income in respect of a decedent (IRD) which are not properly includible in respect of the taxable period in which falls the date of the decedent=s death or a prior period (including the amount of all items of gross income in respect of a prior decedent, if the right to receive such amount was acquired by reason of the death of the prior decedent or by bequest, devise, or inheritance from the prior decedent) shall be included in the gross income, for the taxable year when received, of: (A) the estate of the decedent, if the right to receive the amount is acquired by the decedent=s estate from the decedent; (B) the person who, by reason of the death of the decedent, acquires the right to receive the amount, if the right to receive the amount is not acquired by the decedent=s estate from the decedent; or (C) the person who acquires from the decedent the right to receive the amount by bequest, devise, or inheritance, if the amount is received after a distribution by the decedent=s estate of such right.

Section 691(a)(2) provides that if a right, described in § 691(a)(1), to receive an amount is transferred by the estate of the decedent or a person who received such right by reason of the death of the decedent or by bequest, devise, or inheritance from the decedent, there shall be included in the gross income of the estate or such person, as the case may be, for the taxable period in which the transfer occurs, the fair market value of such right at the time of such transfer plus the amount by which any consideration for the transfer exceeds such fair market value. For purposes of this paragraph, the term “transfer” includes sale, exchange, or other disposition, or the satisfaction of an installment obligation at other than face value, but does not include transmission at death to the estate of the decedent or a transfer to a person pursuant to the right of such person to receive such amount by reason of the death of the decedent or by bequest, devise, or inheritance from the decedent.

Section 1.691(a)-4(b) of the Income Tax Regulations provides that if the estate of a decedent or any person transmits the right to IRD to another who would be required by § 691(a)(1) to include such income when received in his gross income, only the transferee will include such income when received in his gross income. In this situation, a transfer within the meaning of § 691(a)(2) has not occurred.

Section 1.691(a)-4(b)(2) provides that if a right to IRD is transferred by an estate to a specific or residuary legatee, only the specific or residuary legatee must include such income in gross income when received.

Section 642(c)(1) provides that in the case of an estate or trust (other than a trust meeting the specifications of subpart B of part I of subchapter J of chapter 1), there shall be allowed as a deduction in computing its taxable income (in lieu of the deduction allowed by § 170(a), relating to deduction for charitable, etc., contributions and gifts) any amount of the gross income, without limitation, which pursuant to the terms of the governing instrument is, during the taxable year, paid for a purpose specified in § 170(c) (determined without regard to § 170(c)(2)(A)).

Rev. Rul. 64-104, 1964-1 C.B. 223, holds that the unreported increment in value reflected in the redemption value of Series E bonds as of the date of decedent's death constitutes IRD under § 691(a).

Rev. Rul. 92-47, 1992-1 C.B. 198, holds that a distribution to the beneficiary of a decedent's IRA that equals the amount of the balance in the IRA at the decedent's death, less any nondeductible contributions, is IRD under § 691(a)(1) that is includable in the gross income of the beneficiary for the taxable year the distribution is received.

Based solely on the facts and representations submitted we conclude that with regard to the value of the IRAs (less any nondeductible contributions by X) and the unreported increment of the Bonds surrendered by the Trusts and distributed to the Charities, the Trusts will be entitled to a deduction under § 642(c)(1) for an amount equal to the amount of IRD included in the Trusts' gross income. We further conclude with regard to the IRAs assigned to the charities that such assignment will not be a transfer within the meaning of § 691(a)(2). Only the Charities will include the amounts of IRD in the IRAs in their gross income when distributions from the IRAs are received by the Charities.

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

Sincerely,

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

Enclosures: 2

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