

Internal Revenue Service

Number: 200019011

Release Date: 5/12/2000

Index No.: 2055-00.00

Department of the Treasury

P.O. Box 7604

Ben Franklin Station

Washington, DC 20044

Person to Contact:

Telephone Number:

Refer Reply To:

CC:DOM:P&SI:4 - PLR-111410-99

Date: February 8, 2000

Re:

TIN:

Legend:

Decedent =

Charity =

Foreign Country =

City =

Date =

Dear :

This is in response to a June 15, 1999 letter, and subsequent correspondence, from your authorized representative requesting a ruling that rule that the bequest to Charity under article Sixth of Decedent's will qualifies for a deduction from Decedent's gross estate under § 2055(a) of the Internal Revenue Code in determining the United States estate tax due by reason of Decedent's death.

Facts:

The facts submitted and representations made are as follows. Decedent was a citizen and resident of the United States at her death. Article Sixth of Decedent's will provides that her residuary estate is to be divided into specified shares for, and paid to, six named organizations, five organizations in the United States and Charity. However, Article Sixth further provides that no shares be set aside for any of the six organizations that is not a "charity" at Decedent's death.

Under part A of Article Ninth, "charity" is defined as

an organization described in Section 2055(a) of the Internal Revenue Code of 1986 (the "Code"), the amount of a bequest, legacy,

devise or transfer to which pursuant to the provisions hereof shall be allowed as a deduction under said Section 2055(a) in determining [Decedent's] United States Estate Tax.

Under part D of Article Ninth, "[Decedent's] United States Estate Tax" is defined to mean "that one of [Decedent's] Estate Taxes provided for by the law of the United States, other than any generation-skipping transfer tax."

Charity is located in Foreign Country. Charity's by-laws and regulations describe Charity as a nonprofit institution established on Date.

Under Chapter 1, Article 2 of the by-laws, Charity's primary purpose is to provide a residence for musicians, aged sixty and over, who are in financial need of its services. A resident musician's nonmusician spouse and specified relatives who live with, and are dependent upon, the resident musician may also reside at Charity.

To foster interaction between the older musicians and younger musicians, Charity may make some rooms available to music students. The students must be at least age 18, meritorious, in need of financial assistance, and enrolled in particular schools of music located in City, Foreign Country. It is represented that none of the music schools provide dormitories and that the fee Charity charges students is less than any rent they would pay in City, Foreign Country.

Under Chapter I, Article 2 of the by-laws and Chapter XIII, Article 71 of the regulations, the nonmusician spouses, dependent relatives, and students must each pay a monthly fee to cover the full cost of their residence at Charity. An impoverished elderly musician may live at Charity free of charge. However, an elderly musician with any income must contribute to the cost of residency an amount established annually by the board of directors of Charity. If a resident musician no longer needs financial assistance, the board of directors can ask the musician to leave Charity.

Under Chapter XIV, Article 81 of the regulations, any assets of a resident who dies at Charity will be assigned to Charity to the extent necessary to reimburse Charity for its costs incurred while the resident lived there. Any of the deceased resident's assets in excess of the reimbursement charge will pass to the deceased resident's relatives. Under chapter XVII, article 99 of the regulations, Charity pays the cost of a modest funeral for a deceased resident.

Charity maintains an infirmary with a full time physician specialized in geriatric medicine, nurses twenty-four hours a day, and physical therapists. A cardiologist and a specialist in rehabilitative medicine attend residents twice a week. Under Chapter XIV, Article 80 of the regulations, elderly musicians who are seriously ill will live at the infirmary, unless different care is required.

Under Chapter III of the by-laws and Chapter I of the regulations, a nine member board of directors determines policies for Charity for programs for implementing these policies. Under Chapter III, article 6 of the by-laws, four members of the board of directors are appointed by the Municipality Council of City; two members are appointed by the Provincial Council of City. It is represented that these members are generally individuals professionally connected to the music world and are not members of the City or Provincial Council. A professors' committee of a music school, a foundation for a theater, and a private association that supports the work of Charity each appoint one of the other three board members.

The City Council of City must approve Charity's annual financial reports and any amendments to the by-laws and regulations for Charity. The City Council's approval function is to ensure that Charity's charitable purposes are carried out to the fullest extent. Neither the City Council nor any other governmental body exercises control over the day to day operations of Charity.

Charity receives approximately 10 percent of its support from Foreign Country and local governments in Foreign Country and the balance of its support from a substantial number of gifts from individuals as well as from its own endowment fund. Charity is not part of a foreign government or of a political subdivision of a foreign government. It is represented that Charity is not a private foundation because it is an organization described in § 170(b)(1)(A)(vi).

Charity is not operated for profit and no part of the net earnings of Charity inure to the benefit of any private individual. Charity's activities do not concern carrying on propaganda, influencing legislation, or participation in political campaigns.

Law and Analysis:

Under § 2055(a)(2), for purposes of the federal estate tax, 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 of any corporation or association organized and operated exclusively for

religious, charitable, scientific, literary, or educational purposes, no part of the net earnings of which inures to the benefit of any private stockholder or individual, which is not disqualified for tax exemption under § 501(c)(3) by reason of attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

Section 20.2055-1(a)(4) of the Estate Tax Regulations provides that, in the case of estates of citizens or residents of the United States, the deduction under § 2055(a) is not limited to transfers to domestic corporations or associations.

Rev. Rul. 74-523, 1974-2 C.B. 304, concludes that a gift to a foreign government or political subdivision to be used exclusively for charitable purposes qualifies for an estate tax charitable deduction under § 2055. The revenue ruling cites with approval Old Colony Trust Company v. United States, 438 F.2d 684 (1st Cir. 1971), in which an estate tax charitable deduction was allowed for a transfer to a hospital corporation owned by a Canadian municipality; Kaplun v. United States, 436 F.2d 799 (2d Cir. 1970), in which an estate tax charitable deduction was allowed for the value of a coin collection bequeathed to a foreign country for perpetual exhibition in a museum; and National Savings and Trust Company v. United States, 436 F.2d 458 (Ct. Cl. 1971), in which the deduction was allowable for a bequest to a German city on the condition that it be used for the construction or improvement of a home for the aged.

The revenue ruling states that deductions under § 2055(a) will be disallowed for bequests of property to foreign governments or political subdivisions thereof if the use of the property is not limited to exclusively charitable purposes within the meaning of §§ 2055(a)(2) and 2055(a)(3).

Charity qualifies as a charitable organization for purposes of § 2055(a)(2). Accordingly, based on the facts submitted and representations made, we rule that the bequest to Charity under article Sixth of Decedent's will qualifies for a deduction from Decedent's gross estate under § 2055(a) in determining the United States estate tax due by reason of Decedent's death.

Except as specifically ruled herein, we express no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code.

In accordance with a power of attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

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

Sincerely,
Assistant Chief Counsel
(Passthroughs and Special Industries)
By James F. Hogan
Acting Assistant Branch Chief, Branch 4

Enclosure

Copy for section 6110 purposes