199925043

INTERNAL REVENUE SERVICE
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

Index (UIL) No.: 2106.03-00
CASE MIS No.: TAM-117619-98
March 8, 1999

LEGEND:

Decedent =
Date 1 =
Date 2 =
a =
b =
Country X =
Language Y =
Phrase 1 =
Charity B =

U.S. Affiliate =

ISSUE:

Is an estate tax charitable deduction allowable under § 2106 of the Internal Revenue Code for the charitable bequest in Decedent's will that was construed by a court in Country X as providing for a bequest to a United States affiliate of a foreign charity?

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CONCLUSION:

Under the facts presented, an estate tax charitable deduction under § 2106 is allowable for the charitable bequest under the Decedent's will.

FACTS:

Decedent died testate on Date 1, a citizen and resident of Country X. Decedent was not fluent in the language of Country X, but rather, was fluent only in Language Y. Decedent's attorney also spoke and wrote in Language Y. As a result, Decedent's will was drafted in Language Y.

At the time of her death, Decedent owned U.S. securities valued at a. These securities had a value of b on the alternate valuation date. Under the terms of Decedent's will, Decedent provided for a charitable bequest of $1,000,000 to be funded with these U.S. securities. The will did not clearly specify whether the $1,000,000 bequest was to be paid to Charity B, located in Country X, or to U.S. Affiliate, a charity organized in the United States that is the U.S. affiliate of Charity B. The will specifies that the funds are to be used to construct a separate building for the expansion of the hospital operated by Charity B in Country X.

After Decedent's death, the estate's representatives petitioned the appropriate court in Country X for a construction of the charitable provision. In conjunction with this proceeding, the will was translated from Language Y, the language in which it was originally written, into the language of Country X. The court found that it was Decedent's intent to bequeath $1,000,000 to U.S. Affiliate, and entered an order accordingly.

Subsequently, an estate tax return (706NA) was timely filed on Date 2. On the estate tax return as filed, a charitable deduction in the amount of b was claimed with respect to the decedent's charitable bequest.

LAW AND ANALYSIS:

Section 2101 provides that a tax is imposed on the transfer of the taxable estate (determined as provided in section 2106) of every decedent nonresident not a citizen of the United States.

Section 2106(a)(2) provides that for purposes of the tax imposed by § 2101, the value of the taxable estate of every decedent nonresident not a citizen of the United States shall be determined by deducting from the value of that part of his gross estate which at the time of death is situated in the United States that amount of all bequests,

legacies, devises, or transfers:

> (ii) "to or for the use of any domestic corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes . . . ."

In the instant case, representations have been made that Decedent wanted Charity B to receive $1,000,000 to be used for construction purposes. In addition, it has been represented that Decedent was told of the existence of U.S. Affiliate and that a bequest of U.S. securities to U.S. Affiliate would not be subject to U.S. estate tax, thus ensuring that Charity B would ultimately receive the entire $1,000,000 bequest.

The will has been translated into English from both the language of Country X and Language Y for our analysis. In none of these translations, does the organizational name of the charitable donee identically match any of the organizational names used by Charity B or U.S. Affiliate. Both Charity B and U.S. Affiliate utilize Phrase 1 in their organizational title and letterhead. The will also uses this phrase in identifying the charitable donee. Read literally, we believe the will could be viewed as referencing either Charity B or U.S. Affiliate. However, the facts noted above would tend to indicate that Decedent intended to bequeath the funds to U.S. Affiliate. That is, the Decedent desired $1,000,000 be available for Charity B for a specific construction project and a $1,000,000 bequest would generate the requisite amount only if it passed free of federal estate tax. In addition, Decedent was advised of the existence of U.S. Affiliate and that a bequest to U.S. Affiliate would not be subject to estate tax. Thus, construing the will as referencing U.S. Affiliate is reasonable and supportable. The failure of the will to clearly identify U.S. Affiliate may be attributed to the language barrier presented and the similarity of the organizational names involved. Accordingly, we conclude, consistent with the Country X court, that Decedent's will should be construed as providing for a bequest to U.S. Affiliate. [1]

CAVEAT(S)

A copy of this technical advice memorandum is to be given to the taxpayer(s). Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

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[1] In view of this conclusion, we need not decide whether a U.S. court in applying the law of Country X would reach the same result as the Country X court decision and therefore, would give comity to the Country X court decision.