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Internal Revenue Service

Department of the Treasury

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Refer Reply to:
CC:DOM:P&SI:7--PLR-100829-99

UIL: 2055.00-00
691.00-00

Date: June 30, 1999

Re:
TIN:

TIN:

Legend:

Taxpayer:
TIN:
Foundation:
TIN:

Dear Mr. :

This is in response to your representative's letter, dated , , submitted on behalf of Taxpayer and the Foundation, requesting rulings concerning the income and estate tax consequences of the designation of the Foundation as the beneficiary of certain Individual Retirement Accounts (IRAs) and qualified retirement plan accounts of which the Taxpayer is beneficial owner for purposes of § 2055 of the Internal Revenue Code.

The represented facts are as follows: Taxpayer created a private charitable foundation (Foundation) within the meaning of § 509(a) of the Internal Revenue Code. The Foundation received a determination that it qualifies for tax-exempt status pursuant to § 501(a) of the Code as an organization described in § 501(c)(3) of the Code.

The Taxpayer is the owner of one or more IRAs and participates in one or more qualified retirement plans. The Taxpayer intends to name the Foundation as the beneficiary of some or all of the proceeds of the IRAs and qualified retirement plans upon his death. The Taxpayer's spouse has or will execute any consent required by the Code or applicable Treasury regulations with respect to the Foundation as beneficiary of the plans.

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Specifically, you request the following rulings:

1. To the extent that the Foundation is the designated beneficiary of the proceeds, property passing from the IRAs and qualified retirement plans to the Foundation will be eligible for a federal estate tax charitable deduction under § 2055.

2. The estate of the Taxpayer will not recognize taxable income upon the distribution of the proceeds to the Foundation.

3. The beneficiaries of the estate of the Taxpayer will not recognize taxable income upon the receipt of the distribution of the proceeds to the Foundation.

4. The Foundation will not recognize taxable income upon the receipt of the proceeds following the death of the Taxpayer.

5. The Foundation will not be subject to the federal excise tax on investment income under § 4940(a) of the Internal Revenue Code at the time the proceeds pass to the Foundation.

ISSUE 1: (Estate Tax Charitable Deduction)

Section 2039(a) provides that a decedent's gross estate includes the value of an annuity or other payment receivable by any beneficiary by reason of surviving the decedent under any form of contract or agreement entered into after March 3, 1931 (other than as insurance under policies on the life of the decedent), if, under such contract or agreement, an annuity or other payment was payable to the decedent, or the decedent possessed the right to receive such annuity or payment, either alone or in conjunction with another for the decedent's life, or for any period not ascertainable without reference to the decedent's death or for any period which does not in fact end before the decedent's death.

Section 2055(a)(2) provides that for purposes of the tax imposed by § 2001, 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 organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes.

The value of the IRAs and the qualified retirement plans in the present case will be includible in the Taxpayer's gross estate under § 2039(a) of the Code.

Assuming that the Foundation is a foundation defined in § 509(a) of the Code and, thus, is an organization described in § 501(c)(3) at the time of the Taxpayer's death, we conclude that the Taxpayer's estate will be eligible for a federal estate tax deduction under § 2055(a) of the Code for the proceeds of the IRA account and qualified retirement plans passing to the Foundation.

ISSUES 2 & 3: (Income in Respect of a Decedent)

Section 691(a)(1) provides that the amount of all items of gross income in respect of a decedent 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)(3) provides that the right, described in § 691(a)(1), to receive an amount shall be treated, in the hands of the estate of the decedent or any person who acquired such right by reason of the death of the decedent, or by bequest, devise, or inheritance from the decedent, as if it had been acquired by the estate or such person in the transaction in which the right to receive the income was originally derived and the amount includible in gross income under § 691(a)(1) or (2) shall be considered in the hands of the estate or such person to have the character which it would have had in the hands of the decedent if the decedent had lived and received such amount.

Section 1.691(a)-1(b) of the Income in Respect of Decedents Tax Regulations provides that the term "income in respect of a decedent" refers to those amounts to which a decedent was entitled as gross income but which were not properly includible in computing the decedent's taxable income for the taxable year ending with the date of the decedent's death or for a previous taxable year under the method of accounting employed by the decedent.

We conclude that if the Foundation is named one of the designated beneficiaries of the IRAs and the qualified retirement plans, those proceeds distributed to the Foundation from the IRAs and the qualified retirement plans will be income in respect of a decedent to the Foundation under § 691(a)(1)(B) of the Code when distributed to the Foundation. The proceeds from the IRAs and the qualified retirement plans will not be income in respect of a decedent to the Taxpayer's estate and the beneficiaries of the Taxpayer's estate.

ISSUES 4 & 5:

These issues are not answered herein, but are being considered separately.

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

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

Sincerely,

James C. Gibbons

James C. Gibbons
Assistant to the Chief, Branch 7
Office of the Assistant Chief Counsel
(Passthroughs and Special Industries)