Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:4-PLR-114765-00/CC:ITA:B3
Date:
July 25, 2001

Re:

LEGEND

Decedent	=
Spouse	=
Realty Trust	=
Property	=
Tract 1	=
Tract 2	=
Revocable Trust	=
Marital Trust	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
A	=
B	=
C	=
State	=
State Subsidiary Trust	=
v%	=
$w	=
$x	=
$y	=
$z	=
Statute	=
Case	=

Dear :

This is in response to the letter of February 16, 2001, and other correspondence requesting a ruling on the application of §§ 2055(f) and 2031(c)(9) of the Internal Revenue Code to the above-named estate.

The information submitted and representations made are summarized as

follows. Decedent and Spouse executed the Realty Trust on Date 1. They later conveyed the Property, consisting of Tract 1 and Tract 2, which are vacant parcels of land, to the Realty Trust.

The Realty Trust is a nominee trust with the characteristics of both agency and trust with an "agent-trustee" who holds title to property for the benefit of and subject to the control of the beneficial owners. The beneficiaries may terminate the trust at any time, thereby receiving legal title to property as tenants in common in proportion to their beneficial interests. Case.

Under Paragraph 2 of the Realty Trust instrument, the agent-trustees have no power to deal in or with the trust property except as specifically set forth. The trustees, or any one of them, have the power and authority to deal with the trust property only when, as, if, and to the extent specifically directed by the beneficiaries. Under Paragraph 3, the Realty Trust may be terminated at any time by the beneficiaries, or any one or more of them, by notice in writing to the trustees. In all events, the Realty Trust will terminate 20 years from Date 1. On termination, the trustees will transfer the assets to the beneficiaries, as tenants in common without the right of survivorship, in proportion to their respective interests at the time of termination. The "beneficiaries" of the Realty Trust were designated in a "Schedule of Beneficial Interests" filed with the trustee, as revised periodically.

Spouse died on Date 2. Until his death, Spouse's interest in the Realty Trust was held in Revocable Trust, a revocable inter vivos trust created by Spouse. Under the terms of Revocable Trust, on Spouse's death, the trust residue was divided into a marital trust for the benefit of Decedent (Marital Trust) and a family trust. The terms of the Marital Trust granted Decedent a testamentary general power to appoint the corpus of the Marital Trust. Spouse's interest in the Realty Trust, that had been held in Revocable Trust, passed to the Marital Trust.

Decedent died on Date 3. Prior to Decedent's death, the beneficial interests in the Realty Trust was as follows. Decedent held a 33.4% interest; Marital Trust held a 35.4% interest; and A and B each held a 15.6% interest. At Decedent's death, the 35.4% interest held in the Marital Trust passed to trusts for the benefit of A and B; the 33.4% interest owned by Decedent passed to other trusts for the benefit of A and B.

The conservation easement

A, B, and C, as the trustees of the Realty Trust, conveyed a conservation easement on Property to State Subsidiary Trust, pursuant to the laws of State. The grant of the easement became irrevocable on Date 4, after Decedent's death but before the time for filing the estate tax return. The conservation easement on the entire Property is represented as having a value of $x.

On the federal estate tax return filed for Decedent's estate, 68.8% of Property

(representing Decedent's 33.4% interest and the 35.4% interest held in the Marital Trust) was included in her gross estate with a reported fair market value of $w. The executor elected, under § 2031(c), to exclude $y with respect to the 68.8% of Property included in the gross estate. In addition, the executor claimed a deduction under § 2055(f) for $z, representing the portion of the value of the conservation easement attributable to the 68.8% interest in Property includible in Decedent's gross estate.

A and B each will claim an income tax charitable deduction under § 170(h) with respect to the portion of the conservation easement relating to his or her respective 15.6% interest in Property.

You have asked us to rule that, assuming the easement constitutes a qualified real property interest under § 2055(f), Decedent's estate may claim a deduction under § 2055(f) for the value of the conservation easement attributable to the 68.8% tenancy in common interest includible in Decedent's gross estate even though A and B will each claim an income tax charitable deduction with respect to the conservation easement attributable to their proportionate tenancy in common interests.

LAW AND ANALYSIS:

Section 2001 provides that a tax is imposed on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

Section 2031(c)(1) provides that if the executor makes the election, then, except as otherwise provided, there shall be excluded from the gross estate the lesser of

> (A) the applicable percentage of the value of the land subject to a qualified conservation easement, reduced by the amount of any deduction under section 2055(f) with respect to such land, or
>
> (B) the exclusion limitation.

Section 2031(c)(2) provides that the term "applicable percentage" means 40 percent reduced (but not below zero) by 2 percentage points for each percentage point (or fraction thereof) by which the value of the qualified conservation easement is less than 30 percent of the value of any land determined without regard to the value of such easement and reduced by the value of any retained development right, as defined in § 2031(c)(5). The values taken into account under the preceding sentence shall be such values as of the date of contribution.

Section 2031(c)(3) provides that the exclusion limitation in the case of decedents dying during 1999 is $200,000.

Under §§ 2031(c)(8)(A)(iii) and (8)(C), the exclusion is available with respect to a qualified conservation easement placed on the property after the decedent's death by a

member of the decedent's family, the executor of the decedent's estate, or the trustee of a trust which includes the property.

Section 2031(c)(8)(B) provides, generally, that the term "qualified conservation easement" means a qualified conservation contribution as defined in § 170(h)(1) of a qualified property interest as defined in § 170(h)(2)(C).

Section 2031(c)(9) provides that, in any case in which the qualified conservation easement is granted after the date of the decedent's death and on or before the due date (including extensions) for filing the estate tax return, the deduction under section 2055(f) with respect to such easement shall be allowed to the estate but only if no charitable deduction is allowed under chapter 1 to any person with respect to the grant of such easement.

Section 2055(a) provides that, for purposes of the estate tax, the value of the taxable estate shall be determined by deducting from the value of the gross estate the amount of all transfers to charity.

Section 2055(f) provides that a deduction shall be allowed under subsection (a) in respect of any transfer of a qualified real property interest (as defined in section 170(h)(2)(C)) which meets the requirements of section 170(h) (without regard to paragraph (4)(A) thereof).

Under § 2055(f), a deduction is allowed to an estate for a contribution of a qualifying conservation easement exclusively for conservation purposes to a charity (or other qualified organization). Under § 2031(c)(9), the § 2055(f) deduction is allowable even if the executor or the trustee of a trust holding the land grants the qualifying easement after the decedent's death so long as it is granted before the due date (with extensions) for filing the federal estate tax return. However, under § 2031(c)(9), in the case of a qualified conservation easement contributed after a decedent's death, the estate tax deduction provided for in § 2055(f) is allowed only if no income tax deduction is allowed to the estate or the qualified heirs with respect to the post-death grant of the conservation easement. S. Rep. No. 105-174, 105th Cong., 2d Sess. 160 (1998).

In the instant case, A and B each owned a 15.6% undivided co-tenancy interest in Property before Decedent's death. The value of these interests was not included in Decedent's gross estate, and was not subject to the election under § 2031(c)(9). Further, a deduction under § 2055(f) was not claimed or allowable for the conservation easement granted with respect to these interests in Property.

Consequently, we conclude that Decedent's estate may claim a deduction under § 2055(f) for the value of the conservation easement attributable to the 68.8% tenancy in common interest includible in Decedent's gross estate, notwithstanding that A and B will claim a deduction under § 170(h) for the conservation easement granted with respect to the interests in Property they owned.

No opinion is expressed concerning the federal tax consequences of the proposed transaction under any other provisions of the Code. A copy of this ruling should be attached to the taxpayer's federal estate tax return.

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely yours,
George Masnik
Branch Chief, Branch 4
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure
copy for § 6110 purposes