Internal Revenue Service

Department of the Treasury

Washington, DC 20224

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Person to Contact:

Telephone Number:

Refer Reply To:
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Date:
February 12, 2002

Decedent =

Estate =

D1 =

x =

y =

Dear :

This letter responds to your letter dated September 13, 2001, and subsequent correspondence, submitted by you as the authorized representative of Estate, requesting a ruling under § 642 of the Internal Revenue Code.

The information submitted states that Decedent died on D1. Decedent's assets at death totaled $x, including $y in an individual retirement account (IRA). The beneficiary of the IRA is Estate.

Decedent's will (the Will) provides that, after certain specific bequests to individuals and charitable organizations, the residue of Estate, after payment of taxes and expenses of administration, shall be given to such corporations as are organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, which organizations are described in § 2055(a), the specific organizations and allocations to be determined by the executor of Estate (the Executor) in the Executor's sole discretion, so long as such organizations specialize in certain activities specified in the Will.

The Executor represents that the specific bequests to individuals under the Will have been substantially completed. The Executor wishes to distribute the total amount in the IRA to Estate. The Executor requests a ruling that the total amount received by Estate from the IRA will be deductible by Estate in the year of receipt under § 642(c)(2).

Section 691(a)(1) provides that the amount of all items of gross income in respect of a decedent which are not properly includable 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 1.691(a)-1(b) of the Income Tax Regulations provides that the term "income in respect of a decedent" (IRD) refers to those amounts to which a decedent was entitled as gross income, but which were not properly includable 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.

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 tax year the distribution is received.

Section 642(c)(2) provides that, in the case of an estate, and in the case of a trust (other than a trust meeting the specifications of subpart B) required by the terms of its governing instrument to set aside amounts which was (A) created on or before October 9, 1969, if (i) an irrevocable remainder interest is transferred to or for the use of an organization described in § 170(c), or (ii) the grantor is at all times after October 9, 1969, under a mental disability to change the terms of the trust; or (B) established by a will executed on or before October 9, 1969, if (i) the testator dies before October 9, 1972, without having republished the will after October 9, 1969, by codicil or otherwise, (ii) the testator at no time after October 9, 1969, had the right to change the portions of the will which pertain to the trust, or (iii) the will is not republished by codicil or otherwise before October 9, 1972, and the testator is on such date and at all times thereafter under a mental disability to republish the will by codicil or otherwise, there shall also be allowed as a deduction in computing its taxable income any amount of the gross income, without limitation, which pursuant to the terms of the governing instrument is, during the taxable year, permanently set aside for a purpose specified in § 170(c), or is to be used exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, or for the establishment, acquisition, maintenance, or operation of a public cemetery not operated for profit. In the case of a trust, the preceding sentence shall apply only to gross income earned with respect to amounts transferred to the trust before October 9,1969, or transferred under a will to which § 642(c)(2)(B) applies.

Section 1.642(c)-2(d) provides that no amount will be considered to be permanently set aside, or to be used, for a purpose described in § 1.642(c)-2(a) or § 1.642(c)-2(b)(1) unless under the terms of the governing instrument and the circumstances of the particular case the possibility that the amount set aside, or to be used, will not be devoted to such purpose or use is so remote as to be negligible.

Based solely on the facts and representations submitted, we conclude that the amount of $y in Decedent's IRA, less any nondeductible contributions, will be IRD to Estate, and that this amount will be considered as gross income permanently set aside which is deductible by Estate in the year of receipt under § 642(c)(2).

Except as specifically set forth above, no opinion is expressed or implied as to the federal income tax consequences of the transaction described above under any other provision of the Code.

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

Enclosures: 2
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