

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **200827015**
Release Date: 7/4/2008
Index Number: 642.09-00

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B1
PLR-137710-07

Date:
April 09, 2008

LEGEND:

X =

Trust =

Date 1 =

Date 2 =

Date 3 =

Year 1 =

Dear

This letter responds to a letter dated August 15, 2007, submitted on behalf of X, requesting rulings related to the proposed transfer of X's property to an entity exempt from tax.

Facts

X represents that X is a corporation that was formed on Date 1 under the laws of State. X is engaged in the business of providing burial services to the public on a parcel of real property owned by X. X also owns certain buildings and equipment located on the parcel that are used in the provision of the burial services (the parcel, buildings, and equipment are hereafter referred to as the "Cemetery Property"). X also represents that

the Cemetery Property is approaching its burial capacity. As such, X no longer markets burial lots to the public.

Trust is a trust that was formed by X on Date 2. X is the trustee of Trust. Trust was created to ensure sufficient funding for the maintenance and upkeep of the Cemetery Property. Since the inception of Trust, X has periodically deposited certain sums with Trust, typically as plots were sold to the public. Throughout the years, Trust has distributed the amounts necessary to maintain the Cemetery Property to X. Amounts not distributed by Trust have been invested by Trust in a diversified portfolio of stocks, bonds, and other securities.

X represents that it has treated Trust as a separate trust since its formation; that all amounts deposited with Trust have been segregated from the other assets of X; that distributions made from Trust to X have been solely used to defray (1) expenses incurred in connection with the care and maintenance of the Cemetery Property, and (2) administrative expenses directly related to Trust, including investment management fees, taxes, and attorney fees; that since Year 1 Trust has filed 1041 Trust tax returns and that such returns have reflected the gains and losses attributable to the Trust; and that at no time since the formation of Trust has X included gains and losses from the Trust on its corporate income tax returns.

Recently X decided to divest itself from its burial services operations. To accomplish this, X proposes to transfer the Cemetery Property to a newly formed entity that will be exempt from tax under section 501(c)(13) of the Internal Revenue Code (the "Exempt Cemetery Company") (the transfer described above is hereafter referred to as the "Proposed Transfer"). The Exempt Cemetery Company will assume responsibility for maintaining the Cemetery Property and will not transfer any money or other consideration to X as part of the Proposed Transfer. Immediately following the Proposed Transfer, X will resign as trustee of Trust and an independent trustee will be appointed.

Effective Date 3, X made an election to be an S corporation.

Law and Analysis

Section 651 provides that in the case of any trust the terms of which provide that all of its income is required to be distributed currently, and do not provide that any amounts are to be paid, permanently set aside, or used for the purposes specified in § 642(c), there shall be allowed as a deduction in computing the taxable income of the trust the amount of the income for the taxable year which is required to be distributed currently.

Section 661(a) provides that in any taxable year a deduction is allowed in computing the taxable income of a trust (other than a trust to which subpart B applies),

for the sum of (1) the amount of income for such taxable year required to be distributed currently, and (2) any other amounts properly paid or credited or required to be distributed for such taxable year, but such deduction shall not exceed the distributable net income (DNI) of the estate or trust.

Section 1.661(a)-2(f) of the Income Tax Regulations provides that gain or loss is realized by the trust or estate (or the other beneficiaries) by reason of a distribution of property in kind if the distribution is in satisfaction of a right to receive a distribution of a specific dollar amount, of specific property other than that distributed, or of income as defined under § 643(b) and the applicable regulations, if income is required to be distributed currently.

Section 662(a) provides that there shall be included in the gross income of a beneficiary to whom an amount specified in § 661(a) is paid, credited, or required to be distributed (by an estate or trust described in § 661), the sum of the following amounts: (1) the amount of income for the taxable year required to be distributed currently to such beneficiary, whether distributed or not; and (2) all other amounts properly paid, credited, or required to be distributed to such beneficiary for the taxable year.

Section 642(i) provides, in general, that when the specific requirements of the section are met, a cemetery perpetual care fund shall treat certain amounts distributed for the care and maintenance of gravesites as distributions solely for purposes of §§ 651 and 661. With respect to the enactment of § 642(i), the Senate Finance Committee report states that "since the taxable cemetery company is not the beneficiary of the perpetual care trust fund, the bill does not change the treatment of the receipt of such amounts by the taxable cemetery company. Consequently, such an amount is to continue to be taxable to the cemetery company as ordinary income (sec. 61) and is not to be treated as a trust distribution in the hands of the cemetery company (secs. 652 and 662)." S.Rep. No. 1317, 94th Cong., 2d Sess. 3 (1976); 1976-2 C.B. 553, 554.

In Metairie Cemetery Association v. United States, 282 F.2d 225 (5th Cir.1960), the court held that a cemetery corporation was not a beneficiary of a cemetery perpetual care trust, and that interest income distributed to the corporation by the trust for the maintenance of cemetery grounds is treated as compensation for services in the hands of the corporation.

Under the Trust documents and the authorities described above, X is not a beneficiary of Trust. Trust will continue to have the same grantor and the interests of the Trust beneficiaries will not differ compared to their interests before the Proposed Transfer. Therefore, the Proposed Transfer will not result in a distribution from, or termination of, Trust under § 661, and will not result in the realization by Trust, X, or any beneficiary of Trust of any income, gain, or loss attributable to Trust.

X elected to be an S corporation effective Date 3, at which time it owned the Cemetery Property. Thus, to the extent the Proposed Transfer results in recognized built-in gain under § 1374(d)(3) attributable to the Cemetery Property, the provisions of § 1374 and the regulations thereunder shall apply.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, no opinion is expressed on any other tax consequences arising from the transfer of the Cemetery Property to the Exempt Cemetery Company.

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

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to X's authorized representative.

Sincerely,

Audrey W. Ellis

Audrey W. Ellis
Senior Counsel, Branch 1
(Passthroughs & Special Industries)

Enclosures (2)
Copy of this letter
Copy for § 6110