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Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

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PLR-116539-23

Date:
February 20, 2024

Legend

Trust =

State =

Decedent =

Foundation =

Estate =

Will =

Corporation =

Real Property =

Dear :

This letter responds to a letter dated August 4, 2023, and subsequent correspondence, submitted on behalf of Trust, by its authorized representatives, requesting a ruling on whether Trust will be allowed a deduction for a charitable contribution under § 642(c) of the Internal Revenue Code.

FACTS

The information submitted states that Trust was established by Decedent before his death under the laws of State as a revocable trust. During Decedent's life, Trust was treated as a grantor trust under § 676 for federal tax purposes. The trust agreement provides that after payment of certain specific bequests and all taxes, administrative costs and debts, the residue of Trust is to be distributed to Foundation.

Foundation is a charitable private foundation, exempt from tax under § 501(c)(3), formed under the laws of State. Foundation is the sole remaining beneficiary of Trust. Trust represents that the likelihood that its assets will not be distributed to Foundation is negligible because pursuant to the trust agreement and the laws of State, all creditors of Trust are paid or considered paid.

Estate is the estate of Decedent. Pursuant to Decedent's Will, the residue of Estate is to be distributed to the trustees of Trust. Estate and Trust represent that they timely filed a valid election under § 645 to treat Trust as part of Estate for federal tax purposes. Trust represents that because it was a qualified revocable trust within the meaning of § 645 during Decedent's life, it was eligible to make the election under § 645.

Trust is the sole shareholder of the Corporation, a corporation formed under the laws of State, treated as an S corporation for federal tax purposes. The Corporation owns Real Property, which is located in State. The Real Property consists of parcels of unimproved land, except for one parcel which includes an office building that is leased to an unrelated person. Before Decedent's death, Corporation was considered a dealer of real property, treating gain or loss from the sale of any real property as ordinary income or loss.

The Corporation, a cash method taxpayer, intends to make a non-liquidating distribution of all the Real Property consisting of unimproved land, but not the office building, to its sole shareholder, Trust. Trust acknowledges that the distribution will result in the Corporation recognizing gain under § 311(b) equal to the excess of the Real Property's fair market value over the Corporation's adjusted basis in the Real Property in the taxable year of the distribution. Trust further acknowledges that Trust, a cash method taxpayer, will be required to take that gain into gross income under § 1366(a) in the taxable year of the distribution.

Trust represents that it intends to sell the Real Property to an unrelated purchaser. During the period before the sale, when Trust holds the Real Property, or after the sale, when Trust holds the sale proceeds, Trust represents that the Real Property or sale proceeds will be accounted for separately and permanently set aside for the benefit of Foundation.

If Trust is able to sell the Real Property in the same taxable year that the Corporation distributes the Real Property to Trust, Trust represents that it intends to distribute the net sale proceeds to Foundation in the same taxable year in which it receives the sale proceeds or the taxable year immediately following such taxable year pursuant to a valid election under § 645(c)(1).

Trust requests a ruling that it will be allowed a charitable contribution deduction under § 642(c) to the extent that the Corporation actually distributes the Real Property to Trust and Trust either pays or permanently sets aside the Real Property or the net proceeds from the sale of the Real Property for the benefit of Foundation.

LAW AND ANALYSIS

Section 642(c)(1) provides that in the case of an estate or trust (other than a trust meeting the specifications of subpart B), there shall be allowed as a deduction in computing its taxable income (in lieu of the deduction allowed by § 170(a) , relating to the deduction for charitable, etc., contributions and gifts) any amount of the gross income, without limitation, which pursuant to the terms of the governing instrument is, during the taxable year, paid for a purpose specified in § 170(c) (determined without regard to § 170(c)(2)(A)). If such charitable contribution is paid after the close of such taxable year and on or before the last day of the year following the close of such taxable year, then the trustee or administrator may elect to treat such contribution as paid during such taxable year. The election shall be made at such time and in such manner as the Secretary prescribes by regulations.

Section 642(c)(2) provides that in the case of an estate, there shall 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.

Section 1.642(c)-2(a) provides for an unlimited deduction for any part of the gross income of an estate which pursuant to the terms of the will—(1) Is permanently set aside during the taxable year for a purpose specified in § 170(c), or (2) Is used or 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 of, acquisition, maintenance, or operation of a public, non-profit cemetery.

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 (b)(1) unless under the terms of the governing instrument and the circumstances of a 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.

Section 1.642(c)-3(b)(1) provides that, if pursuant to the terms of the governing instrument an estate, pooled income fund, or other trust pays, permanently sets aside, or uses any amount of its income for a purpose specified in § 642(c)(1) , (2), or (3), and that amount includes any items of estate or trust income not entering into the gross income of the estate or trust, the deduction allowable under § 1.642(c)-1 or § 1.642(c)-2 is limited to the gross income so paid, permanently set aside, or used.

Section 645(a) states that, if both the executor (if any) of an estate and the trustee of a qualified revocable trust elect the treatment provided in § 645, such trust must be treated and taxed as part of such estate (and not as a separate trust) for all taxable years of the estate ending after the date of the decedent's death and before the applicable date.

Section 645(b) states that the term “qualified revocable trust” means any trust (or portion thereof) which was treated under § 676 as owned by the decedent of the estate referred to in § 645(a) by reason of a power in the grantor (determined without regard to § 672(e)).

Section 645(b)(2) states that the term “applicable date” means—(A) If no return of tax imposed by chapter 11 is required to be filed, the date which is 2 years after the date of the decedent's death, and (B) If such a return is required to be filed, the date which is 6 months after the date of the final determination of the liability for tax imposed by chapter 11.

Section 645(c) provides that the election under § 645(a) must be made not later than the time prescribed for filing the return of tax imposed by this chapter for the first taxable year of the estate (determined with regard to extensions) and once made, is irrevocable.

Section 1.645-1(b)(2) states that an electing trust is a qualified revocable trust for which a valid § 645 election has been made and once a § 645 election has been made for the trust, the trust shall be treated as an electing trust throughout the entire election period.

Section 1.645-1(e)(2)(i) provides that if there is an executor, the electing trust is treated, during the election period, as part of the related estate for all purposes of subtitle A of the Code. Thus, for example, the electing trust is treated as part of the

related estate for purposes of the set-aside deduction under § 642(c)(2), the subchapter S shareholder requirements of § 1361(b)(1), and the special offset for rental real estate activities in § 469(i)(4).

Section 1.645-1(e)(2)(iv) provides that a deduction is allowed in computing the taxable income of the combined electing trust and related estate to the extent permitted under § 642(c) for—(A) Any amount of the gross income of the related estate that is paid or set aside during the taxable year pursuant to the terms of the governing instrument of the related estate for a purpose specified in § 170(c); and (B) Any amount of gross income of the electing trust that is paid or set aside during the taxable year pursuant to the terms of the governing instrument of the electing trust for a purpose specified in § 170(c).

Section 1.645-1(f)(1) states that the election period begins on the date of the decedent's death and terminates on the earlier of the day on which both the electing trust and related estate, if any, have distributed all of their assets, or the day before the applicable date. The election does not apply to successor trusts (trusts that are distributees under the trust instrument).

Section 1.645-1(f)(2) provides that the applicable date means—(i) If a Form 706 is not required to be filed as a result of the decedent's death, the applicable date is the day which is 2 years after the date of the decedent's death, (ii) If a Form 706 is required to be filed as a result of the decedent's death, the applicable date is the later of the day that is 2 years after the date of the decedent's death, or the day that is 6 months after the date of final determination of liability for estate tax. Solely for purposes of determining the applicable date under § 645, the date of final determination of liability is the earliest of the following—(A) The date that is six months after the issuance by the Internal Revenue Service of an estate tax closing letter, unless a claim for refund with respect to the estate tax is filed within twelve months after the issuance of the letter; (B) The date of a final disposition of a claim for refund, as defined in § 1.645-1(f)(2)(iii), that resolves the liability for the estate tax, unless suit is instituted within six months after a final disposition of the claim; (C) The date of execution of a settlement agreement with the Internal Revenue Service that determines the liability for the estate tax; (D) The date of issuance of a decision, judgment, decree, or other order by a court of competent jurisdiction resolving the liability for the estate tax unless a notice of appeal or a petition for certiorari is filed within 90 days after the issuance of a decision, judgment, decree, or other order of a court; or (E) The date of expiration of the period of limitations for assessment of the estate tax provided in § 6501.

Section 681(a) states that in computing the deduction allowable under § 642(c) to a trust, no amount otherwise allowable under § 642(c) as a deduction shall be allowed as a deduction with respect to income of the taxable year which is allocable to its unrelated business income for such year. For purposes of the preceding sentence, the term “unrelated business income” means an amount equal to the amount which, if such

trust were exempt from tax under § 501(a) by reason of § 501(c)(3), would be computed as its unrelated business taxable income under § 512 (relating to income derived from certain business activities and from certain property acquired with borrowed funds).

Section 1.681(a)-(2)(a) provides that no charitable contributions deduction is allowable to a trust under § 642(c) for any taxable year for amounts allocable to the trust's unrelated business income for the taxable year. For the purpose of § 681(a), the term "unrelated business income" of a trust means an amount which would be computed as the trust's unrelated business taxable income under § 512 and the regulations thereunder, if the trust were an organization exempt from tax under § 501(a) by reason of § 501(c)(3). For the purpose of the computation under § 512, the term "unrelated trade or business" includes a trade or business carried on by a partnership of which a trust is a member, as well as one carried on by the trust itself. While the charitable contributions deduction under § 642(c) is entirely disallowed by § 681(a) for amounts allocable to "unrelated business income", a partial deduction is nevertheless allowed for such amounts by the operation of § 512(b)(11), as illustrated in §§ 1.681(a)-(2)(b) and (c). This partial deduction is subject to the percentage limitations applicable to contributions by an individual under § 170(b)(1)(A) and (B), and is not allowed for amounts set aside or to be used for charitable purposes but not actually paid out during the taxable year. Charitable contributions deductions otherwise allowable under § 170, § 545(b)(2), or § 642(c) for contributions to a trust are not disallowed solely because the trust has unrelated business income.

Section 512(b)(11) provides that to the extent a trust has unrelated business income, and a charitable deduction is disallowed under § 681, the trust is instead entitled to a charitable deduction under § 170 as if the trust was treated as an individual taxpayer having adjusted gross income equal to the amount of the trust's unrelated business income.

CONCLUSION

Based solely on the facts submitted and the representations made, we conclude that Trust may deduct those amounts of gross income that are paid to or set aside under § 642(c) to the extent that those amounts are includible in the gross income of Trust for the taxable year as a result of the distribution of the Real Property from the Corporation.

Except as specifically set forth above, we express or imply no opinion concerning the federal tax consequences of the facts of this case under any other provision of the Code and the regulations thereunder.

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

Pursuant to a power of attorney on file with this office, we are sending a copy of this letter to Trust's authorized representatives.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for a ruling, it is subject to verification on examination.

Sincerely,

Richard T. Probst
Senior Technician Reviewer, Branch 3
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure
Copy of this letter for § 6110(k)(3) purposes

cc: