

The information submitted states that A, who died on D1, was the grantor during life of Trust. A's will provides that A's assets subject to probate should be added to Trust. A was the owner of assets including three individual retirement accounts (the IRAs). A intended to designate Trust as the beneficiary of the IRAs but mistakenly the Estate was designated as beneficiary. The Estate petitioned the Court to reform the beneficiary designation to designate Trust as the beneficiary of the IRAs, which was granted on D2. Trust provides that on the death of A, all the assets of Trust shall be distributed, and that Charity #1 and Charity #2 shall each receive a portion of the residue of Trust. Trust further provides that the trustee may make distributions in cash or in kind, without being required to make pro rata distributions. The trustee of Trust proposes to fund these residuary bequests by assigning the three IRAs to Charity #1 and Charity #2 in satisfaction of their residuary shares of Trust.

Law and Analysis

Section 691(a)(1) provides that the amount of all items of gross income in respect of a decedent (IRD) 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)(2) provides that if a right, described in § 691(a)(1), to receive an amount is transferred by the estate of the decedent or a person who received such right by reason of the death of the decedent or by bequest, devise, or inheritance from the decedent, there shall be included in the gross income of the estate or such person, as the case may be, for the taxable period in which the transfer occurs, the fair market value of such right at the time of such transfer plus the amount by which any consideration for the transfer exceeds such fair market value. For purposes of § 691(a)(2), the term "transfer" includes sale, exchange, or other disposition, or the satisfaction of an installment obligation at other than face value, but does not include transmission at death to the estate of the decedent or a transfer to a person pursuant to the right of such person to receive such amount by reason of the death of the decedent or by bequest, devise, or inheritance from the decedent.

Section 1.691(a)-4(b) of the Income Tax Regulations provides that if the estate of a decedent or any person transmits the right to IRD to another who would be required

by § 691(a)(1) to include such income when received in his gross income, only the transferee will include such income when received in his gross income. In this situation, a transfer within the meaning of § 691(a)(2) has not occurred.

Section 1.691(a)-4(b)(2) provides that if a right to IRD is transferred by an estate to a specific or residuary legatee, only the specific or residuary legatee must include such income in gross income when received.

Section 1.691(a)-4(b)(3) provides that if a trust to which is bequeathed a right of a decedent to certain payments of income terminates and transfers the right to a beneficiary, only the beneficiary must include such income in gross income when received. If the transferee described in § 1.691(a)-4(b)(2) or (3) transfers his right to receive the amounts in the manner described in § 1.691(a)-4(a), the principles contained in § 1.691(a)-4(a) are applied to such transfer. On the other hand, if the transferee transmits his right in the manner described in § 1.691(a)-4(b), the principles of § 1.691(a)-4(b) are again applied to such transfer.

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.

Conclusion

Based solely on the facts and representations submitted, we conclude that the assignment of the IRAs to Charity #1 and Charity #2 in satisfaction of their share of the residue of Trust will not be a transfer within the meaning of § 691(a)(2). Only Charity #1 and Charity #2 will include the amounts of IRD of the IRAs in their gross income when the distribution or distributions from the IRAs are received by Charity #1 and Charity #2.

Except as specifically ruled above, we express no opinion concerning the federal tax consequences of the transactions described above under any other provisions of the Code.

This ruling is directed only to the taxpayer who requested it. According to § 6110(k)(3), this ruling may not be used or cited as precedent.

Sincerely,

/s/

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