

**Internal Revenue Service**

Department of the Treasury

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Person to Contact:

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Date:  
December 22, 1999

LEGEND:

Decedent =

Trust =

a =

b =

Company =

State =

A =

c =

B =

d =

e =

f =

g =

h =

C =

i =

Shareholders =

Dear \_\_\_\_\_ :

In a letter, dated June 3, 1999, and a supplemental letter, dated September 7, 1999, you requested several rulings under § 2031(c) of the Internal Revenue Code. This letter responds to your request.

The information submitted and the representations made are summarized as follows: On the date of Decedent's death, Decedent owned, through the Trust, a of the b outstanding shares of the Company. A, the Company's principal asset, contains about c acres of ranchland in B. In d, the Company acquired from State a tract of approximately e acres at the northern end of A. When the Company acquired the e acre tract from State, State reserved the right to conduct extractions activities on the site.

Over a period of years beginning in f, the Company donated a series of g separate conservation easements on various portions of A. At Decedent's death, all except an h parcel of A and the e acres with respect to which State retained extraction rights was restricted by conservation easements. C was, at the date of Decedent's death, and is now the holder of all of the conservation easements. It is represented that C is a "qualified organization " under § 170(h)(3).

Although the conservation easements prohibit most residential development, all industrial activities, and most commercial activities, the land subject to the conservation easements can be subdivided into a number of separate parcels, subject to the terms of the easements. In addition, the terms of the easement documents do not expressly prohibit certain commercial activities, including commercial recreational activities.

In order to carry out Decedent's goal of restricting the land subject to the easements against all but the most minimal residential development and expressly to prohibit any commercial recreational activity and any subdivision of the land subject to the easements into more than one ownership, all of the Shareholders of the Company, on i, executed an AGREEMENT TO EXTINGUISH RETAINED DEVELOPMENT RIGHTS UNDER SECTION 2031(c)(5) (the Agreement). It is represented that the Agreement was executed on or before the due date for filing Decedent's Form 706.

Paragraph 1 of the Agreement provides that the Agreement is made pursuant to the provisions of § 2031(c)(5) by and among the Company and its Shareholders.

Paragraph 4 of the Agreement identifies A as the Company's only asset and describes the conservation easements. Paragraph 4 describes the retained development rights to be extinguished pursuant to the Agreement as follows:

(i) any right to subdivide the land subject to the conservation easements into more than one ownership, and

(ii) any right to use any part of the land subject to the conservation easements for any commercial purpose that is not subordinate to and directly supportive of the use of the land as a farm for farming purposes (within the meaning of §§ 2031(c)(5)(D) and 2032A(e)(5)).

Paragraph 5 of the Agreement provides that the Company and the Shareholders unconditionally covenant and agree that it is the expressed intention of the Company and the Shareholders:

(i) to take whatever action is necessary to extinguish permanently the retained development rights identified in Paragraph 4; and

(ii) that the company shall be liable for additional taxes under § 2031(c)(5)(C) if the Agreement is not implemented by the earlier of:

- A. The date that is 2 years after the date of Decedent's death or
- B. The date of sale of the land subject to the qualified conservation easements.

Paragraph 6 of the Agreement provides that in the event the Agreement is not timely implemented, the Company will report the additional tax on whatever return is required by the Internal Revenue Service and will file the return and pay the additional tax by the last day of the sixth month following the applicable date described in Paragraph 5.

Paragraph 8 of the Agreement provides that any general rule of construction notwithstanding, the Agreement is to be liberally construed in favor of the intention of the Company to comply with the provisions of § 2031(c)(5). If any provisions in the Agreement are found to be ambiguous, an interpretation consistent with the purpose of the Agreement that would render the provision valid is to be favored over any interpretation that would render it invalid. The Company and the Shareholders may amend the Agreement to comply with any rules that may be prescribed by the Secretary of the Treasury.

You have requested the following rulings:

1. The retained rights under the existing conservation easements to: (i) subdivide the land subject to the easement into more than one parcel in different ownership, and (ii) conduct unspecified, non-prohibited commercial activity, are retained development rights defined in § 2031(c)(5)(D) that can be terminated pursuant to § 2031(c)(5)(B).

2. The Agreement to extinguish permanently (i) any right to subdivide the land subject to the easement into more than one ownership, and (ii) any right to use any part of the land subject to the easement for any commercial purpose that is not subordinate to and directly supportive of the use of the land as a farm for farming purposes (within the meaning of §§ 2031(c)(5)(D) and 2032A(e)(5)), executed on or before the due date for filing the Form 706, and filed with the Form 706, will satisfy the requirements of § 2031(c)(5)(B).

3. If the existing conservation easements constitute “qualified conservation contributions” as defined in § 170(h)(1), as modified by the termination of the retained development rights they will constitute “qualified conservation easements” as defined in § 2031(c)(8)(B).

Section 2001 imposes a tax on the transfer of the taxable estate of every decedent who is a citizen of the United States.

Section 2031 (a) provides that the value of the gross estate of a decedent shall be determined by including to the extent provided for in this part, the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated.

Section 2031(c)(1) provides that if the executor makes the election described in § 2031(c)(6), then, except as otherwise provided in § 2031(c), there shall be excluded from the gross estate the lesser of---

(A) the applicable percentage of the value of land subject to a qualified conservation easement, reduced by the amount of any deduction under § 2055(f) with respect to the land, or

(B) the exclusion limitation.

Section 2031(c)(5)(A) provides that § 2031(c)(1) does not apply to the value of any development right retained by the donor in the conveyance of a qualified conservation easement.

Section 2031(c)(5)(B) provides that if every person in being who has an interest (whether or not in possession) in the land executes an agreement to extinguish permanently some or all of any development rights (as defined in § 2031(c)(5)(D)) retained by the donor on or before the date for filing the return of the tax imposed by

§ 2001, then any tax imposed by § 2001 shall be reduced accordingly. Such agreement shall be filed with the return of the tax imposed by § 2001. The agreement shall be in such form as the Secretary shall prescribe.

Section 2031(c)(5)(C) provides that any failure to implement the agreement described in § 2931(c)(5)(B) not later than the earlier of—

(i) the date that is 2 years after the date of the decedent's death, or

(ii) the date of the sale of the land subject to the qualified conservation easement,

shall result in the imposition of an additional tax in the amount of the tax that would have been due on the retained development rights subject to the agreement. The additional tax shall be due and payable on the last day of the 6<sup>th</sup> month following such date.

Section 2031(c)(5)(D) provides that for purposes of § 2031(c), the term "development right" means any right to use the land subject to the qualified easement in which such right is retained for any commercial purposes which is not subordinate to and directly supportive of the use of such land as a farm for farming purposes (within the meaning of § 2032A(e)(5)).

Section 2031(c)(8)(B) defines the term "qualified conservation easement" to mean a qualified conservation contribution (as defined in § 170(h)(1)) of a qualified real property interest (as defined in § 170(h)(2)(C)), except that clause (iv) of § 170(h)(4)(A) shall not apply, and the restriction on the use of such interest described in § 170(h)(2)(C) shall include a prohibition on more than a de minimis use for a commercial recreational activity.

Based on the information submitted and the representations made, we conclude as follows:

1. The retained rights under the existing conservation easements to: (i) subdivide the land subject to the easement into more than one parcel in different ownership, and (ii) conduct unspecified, non-prohibited commercial activity, are retained development rights defined in § 2031(c)(5)(D) that can be terminated pursuant to § 2031(c)(5)(B).

2. The Agreement to extinguish permanently (i) any right to subdivide the land subject to the easement into more than one ownership, and (ii) any right to use any part of the land subject to the easement for any commercial purpose that is not subordinate to and directly supportive of the use of the land as a farm for farming purposes (within

the meaning of §§ 2031(c)(5)(D) and 2032A(e)(5)), executed on or before the due date for filing the Form 706, and filed with the Form 706, satisfies the requirements of § 2031(c)(5)(B).

3. If the existing conservation easements constitute “qualified conservation contributions” as defined in § 170(h)(1), as modified by the termination of the retained development rights they will constitute “qualified conservation easements” as defined in § 2031(c)(8)(B).

Except as ruled above, we express or imply no opinion concerning the federal tax consequences of this transaction under the cited provisions of the Code or any other provision of the Code. In particular, we express or imply no opinion whether the existing conservation easements constitute “qualified conservation contributions” as defined in § 170(h)(1).

This letter is based on the facts presented and the applicable law in effect on the date of this letter. If there is a change in material fact or law (local or federal) before the transactions considered in this ruling take effect, the ruling will have no force or effect.

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

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely yours,

for/Joseph H. Makurath  
Christine E. Ellison  
Chief, Branch 7  
Office of the Assistant Chief Counsel  
(Passthroughs and Special Industries)