Internal Revenue Service

Department of the Treasury

Index Number: 2055.12-00

-1-

Washington, DC 20224

Number: **200027015**
Release Date: 7/7/2000

Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:P&SI:4-PLR-119829-99
Date:

April 4, 2000

Re:

Legend:

Trust   =

Grantor   =

Church   =
Charity   =
City   =
Community College =

Dear   :

This is in response to your letter dated February 17, 2000, and prior correspondence, in which you requested rulings concerning the estate tax consequences of a reformation to a trust.

In 1982, Grantor established a revocable trust (Trust). Article III of the Trust provides that, upon Grantor's death, the Trust is to be held for the benefit of Church and that the net income from Trust shall be paid quarterly to Church to be used as follows:

(a) twice each year, Church shall purchase six bouquets of flowers to decorate the graves of Grantor and other family members;

(b) 50 percent of the balance of the income shall be used by Church for the maintenance and operation of Church; and

(c) the remaining 50 percent of the balance of the income shall be used by Church for the student loan program established by Church in 1982.

Article IV(B) provides that, if the Church fails to use at least 75 percent of the income for the student loan program over a ten year period, the income from the 50 percent of the Trust so designated shall be paid quarterly to Community College for use by College for assistance to students.

Grantor died on November 19, 1998. It is represented that the value of assets in Grantor's gross estate is approximately $2,000,000. The assets consist principally of marketable securities and cash equivalents. The substantial majority of the assets comprising the gross estate, after payment of debts expenses and taxes, will be disposed under the terms of Trust.

The personal representative of Grantor's estate represents that the use of income to place flowers on the graves of family members raised an issue with respect to the rule against perpetuities as it applied to Trust. Under Ohio Revised Code Ann. § 2131.08, no interest in real or personal property shall be good unless it must vest, if at all, not later than twenty-one years after a life or lives in being at the creation of the interest. In addition, any interest in real or personal property that would violate the rule against perpetuities shall be reformed within the limits of the rule, to approximate most closely the intention of the creator of the interest. Generally, this rule does not apply to wholly charitable trusts. Barton v. Parrott, 493 N.E. 2d 973 (Ohio Com. Pl. 1984). See also, IVA W. Fratcher, Scott on Trusts, § 365 (4th ed. 1987).

In this case, however, the Trust in its original form was not a wholly charitable trust. The personal representative of Grantor's estate maintains that it had a fiduciary duty to resolve issues relating to the rule against perpetuities. Thus, the personal representative, with the trustee of Trust, instituted an action in State court for a determination regarding the applicability of the rule against perpetuities as it applied to the Trust.

A hearing was held on December 17, 1999. The court determined that Trust violated the rule against perpetuities and therefore was required to be reformed under state law.   The court construed and reformed the trust instrument by replacing Article III(a) of the Trust with a pre-residuary lump-sum gift for grave flowers and the continuation of the Trust exclusively for charitable purposes. Specifically, the court order provides that the trustee will pay a single, lump sum gift of $43,000 to City, as owner of the cemetery, in complete satisfaction of the provision under the original trust instrument relating to placing flowers on the graves. The Trust is required to be administered, beginning as of Grantor's death, by distributing all of its income for the maintenance and operation of Church and for the student loan program administered by the Church.

The estate requested a ruling that the Trust, as reformed, qualifies for the charitable deduction under § 2055 of the Code.

PLR-119829-99

Section 2055(a)(2) provides that, for purposes of the Federal estate tax, the value of the taxable estate shall be determined by deducting from the value of the gross estate all bequests to or for the use of certain governmental entities, certain corporations organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, and certain other fraternal and veterans organizations.

In this case, the personal representative of Grantor's estate had a fiduciary duty to resolve issues relating to the rule against perpetuities. The court construed and reformed the trust instrument in a manner that resulted in the immediate gift of $43,000 to City, the owner of the cemetery, to satisfy the provision in the original trust instrument requiring that flowers be placed on the graves of family members. The court also ordered that Trust be continued exclusively for charitable purposes and that it be administered, beginning as of Grantor's death, by distributing all of its income for the maintenance and operation of Church and for the student loan program administered by the Church. Thus, the amount passing to Trust as reformed qualifies for the charitable deduction under § 2055.

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.

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

The rulings contained in this letter are 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 rulings, it is subject to verification on examination.

Sincerely yours,
Robert G. Honigman
Acting Assistant To The Branch Chief
Branch 4

Enclosure
    Copy for section 6110 purposes