

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

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Telephone Number:

In Re:

Refer Reply To:

CC:PSI:B04 – PLR-107951-03

Date: JANUARY 23, 2004

LEGEND:

Husband =
Wife =
Foundation =

Donors' Gallery =
Museum =
Collection =
Date 1 =
Date 2 =
Date 3 =
Date 4 =
Period =
a =

Dear :

This is in response to your January 7, 2003 letter and other correspondence requesting a ruling concerning the federal estate tax consequences of a proposed bequest.

You have requested the following rulings:

1. The value of the proposed bequest upon the death of the survivor of Taxpayers to the Museum (or if the Museum refuses to accept the contribution, to the Foundation), of the Taxpayer's interest in the works of art comprising the Collection, subject to the conditions of the Agreement, will be deductible from the Taxpayer's gross estate under section 2055 of the Internal Revenue Code.

2. The amount of the deduction under section 2055 for the proposed bequest, upon the death of the survivor of the Taxpayers, to the Museum (or if the Museum refuses to accept the contribution, to the Foundation), of the Taxpayer's interest in the works of art comprising the Collection, will be equal to the full fair market value of the Taxpayer's interest in the works of art comprising the Collection includible in the Taxpayer's gross estate under sections 2031 and 2033.

The facts submitted are as follows:

Husband and Wife (the Taxpayers) have acquired a significant collection of Period art known as the Collection. Most of the Collection is currently displayed in the Donors' Gallery, which is a part of the Taxpayers' home located at the Farm.

The Taxpayers entered into an Agreement on Date 1 with Foundation and the Trustees of Museum concerning the Taxpayers' donation of the Collection either during the lifetime of either or both of them or upon the death of the survivor of them (Donation). The Agreement was later amended on Date 2 and Date 3.

Section 1.A of the Agreement provides that in the event the Taxpayers elect, in their sole discretion, to make the Donation, the Trustees of Museum shall accept the Collection on behalf of the Museum, and the Trustees shall display and maintain the Collection in accordance with the terms and conditions set forth herein. Immediately upon the occurrence of the Donation, title to the Collection shall vest in the Trustees, for the benefit of Museum, and at all times thereafter the Trustees shall be and remain solely responsible for the custody, control, management, exhibition, conservation of and curatorial services for, the Collection in accordance with the terms of this Agreement. Trustees acknowledge and agree that nothing contained in this Agreement shall be deemed to obligate the Taxpayers to make the Donation.

Section 2.A (i) provides that the intention of the parties is that each work of art comprising the Collection shall at all times be located, housed and permanently displayed, in perpetuity, at either the Museum or Donors' Gallery. The Museum shall at all times utilize the Donors' Gallery to its capacity for the exhibition of works of art from the Collection, or the exhibition of works of art by artists whose works comprise part of the Collection which are either part of the Museum's collection, or on loan to the Museum, or exhibited in connection with special temporary exhibitions. At all times, a minimum number of works of art from the entire Collection shall be housed and permanently displayed, in perpetuity, at the Museum. The minimum number is defined as a number not less than the total number of gifts of works of art made by the Taxpayers prior to the Donation, excluding works on paper. In accordance with the provisions of the Agreement, if after utilizing the Donors' Gallery to its capacity and adhering to the provisions of paragraph 2.A.(i) in the Agreement with respect to the Minimum Number, there remain works of art in the Collection not on display, the Museum will use its best efforts to exhibit such works of art at the Museum.

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Section 2.A (ii) provides that all works of art on paper comprising part of the Collection shall at all times be located, housed and/or displayed at the Donors' Gallery, consistent with generally accepted conservation guidelines in effect from time to time. Such works of art on paper shall be subject to temporary relocation to the Museum for the sole purpose of exhibiting such works of art on paper at the Museum, or in connection with research.

Section 2.B provides that upon the Donation, the Trustees of Museum shall promptly cause all works of art in the Collection to be included within the Museum's blanket insurance policy, which insures the Museum's entire collection from time to time. The proceeds of any such insurance shall, at the option of the Trustees, be used either for the restoration of the damaged work, or the purchase of a replacement work of art by any of the artists whose works of art comprise the Collection.

Section 2.C provides that the Museum will provide all conservation and curatorial services for each work of art in the Collection, wherever located, in the same manner as is provided for the Museum's permanent collection, at the sole cost and expense of Museum. The conservation and curatorial services for the Collection shall include, but shall not be limited to, all cleaning, framing, hanging, handling, restoration, transportation, and insurance. In the event that any work of art in the Collection requires restoration, the Museum shall select a restorer who is an expert in the school of art and/or artist of the work involved, whether or not that restorer is employed by Museum.

Section 2.D provides that all of the works in the Collection which are displayed at the Museum will be displayed in galleries which have been decorated, equipped, and maintained in a manner which, in the professional judgment of the Director or Chief Curator of Museum, will enhance the aesthetic appeal of the works in the Collection, will provide for the comfortable enjoyment of the Collection by the public, and will be comparable in quality and aesthetic appeal to the permanent collection currently displayed at the Museum. The Museum will be solely responsible for all reasonable costs and expenses relating to the decoration, equipping and maintenance of the galleries at the Museum in which the Collection is displayed, which will include the responsibility for all lighting, air conditioning and humidity controls, cleaning, installation, security systems, security, seating and floor coverings in the galleries. In addition, the galleries in which the Collection is displayed shall be in locations which are at all times during Museum hours easily accessible to the public.

Section 2.E provides that the Museum shall be responsible for all conservation and curatorial services for each work of art from the Collection located at the Donors' Gallery, including all cleaning, framing, hanging, handling, restoration, transportation, and insurance, and all costs and expenses related thereto. The Trustees shall select an administrator of the Donor's Gallery who shall coordinate the respective duties and activities of the Trustees and the Board, and act as liaison between them. The Trustees shall have the right to change the Administrator from time to time in their sole discretion. The Administrator shall be responsible for the administration and operation of the

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Donors' Gallery and the Taxpayers' residence, including, but not limited to, all lighting, air conditioning and humidity controls, cleaning (other than the works of art in the Collection), security systems, security, seating and floor coverings; and all of the expenses in connection with the foregoing, including the salary of the Administrator, shall be borne by the Foundation.

Section 2.F provides that each work of art in the Collection, as well as the entire Collection, wherever located, will at all times be attributed, clearly and visibly, as part of the Collection.

Section 2.G provides that the Trustees of Museum shall not, at any time, sell, trade, transfer or otherwise dispose of, or permit the sale, trade, transfer or other disposition of, all or any of the works of art in the Collection. In the event of any attempted sale, trade, transfer or disposition of any work of art in the Collection in violation of the terms of this Agreement, the ownership of that work of art shall immediately and automatically vest in the Foundation, without any action on the part of the Foundation.

Section 2.H provides that subject to the provisions of paragraph 2.A hereof, the Trustees shall not, at any time, store, loan or relocate, or permit the storage, lending or relocation, of any of the works of art in the Collection (other than the relocation of works of art in the Collection between the Donors' Gallery and the Museum), except under special circumstances approved by the Museum's senior staff Member(s) of Period art, such as a major retrospective or in order to enhance the reputation of a particular artist or artists in connection with an exhibition of the works of such artist or artists.

Section 2.I provides that the Trustees agree to display works of art at the Donors' Gallery at all times of sufficient quantity, quality and variety so as to establish the high standards established by Taxpayers. Accordingly, in the event that the Trustees remove any works of art which are part of the Collection from the Donors' Gallery for the purpose of exhibiting such works of art at the Museum, or for any reason permitted under the provisions of this Agreement, the Trustees shall, in place of the works of art so removed, exhibit works of art which are not part of the Collection, provided that such works of art are by artists whose works of art are part of the Collection.

Section 2.J provides that the Museum will promote the use of Donors' Gallery so as to make the public aware of the quality of the Collection and the setting in which the Collection is displayed, all to the end that the Collection shall become open and accessible to, and stimulate the interest of, the general public.

Section 3 provides that prior to or simultaneously with the Donation, the Taxpayers will contribute to the Foundation the Donors' Gallery, the Taxpayers' residence, and funds to generate an income stream which will, in the opinion of the Taxpayers, be sufficient to operate the Foundation, operate and maintain the Donors' Gallery and the Taxpayers' residence, and otherwise comply with the Foundation's other obligations under this Agreement.

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Section 6 provides that in the event that Museum defaults in its obligations, the Foundation shall have the option, upon written notice to the Trustees, to terminate the Agreement, and/or to exercise any other remedies available to them at law or in equity. Upon termination of the Agreement, the ownership of all of the works of art comprising the Collection which have been given or donated to the Trustees for the benefit of Museum shall immediately revert to the Foundation.

Section 7.A provides that the Foundation shall operate the Donors' Gallery for a minimum of ten years from the date of the Donation. At any time after the expiration of such ten year period, the Foundation shall have the right to terminate this Agreement, upon thirty days written notice to the Trustees, in the event that: (i) the Collection is on permanent display at the Museum; (ii) in the opinion of the Foundation, it is not economically feasible to continue to operate and maintain the Donors' Gallery and the Taxpayers' residence; or (iii) in the opinion of the Foundation, the continued operation of the Donors' Gallery and the Taxpayers' residence is not consistent with the intent of the Taxpayers.

Section 7.B provides that in the event that the Foundation elects to terminate this Agreement in accordance with the provisions set forth in Paragraph A, the Trustees shall promptly cause any portion of the Collection remaining at the Donors' Gallery to be delivered to the Museum, which delivery shall be fully insured, all at the cost and expense of the Museum. After termination of this Agreement, neither the Trustees nor the Museum shall have any claim to any assets of the Foundation.

Section 7.C provides that in the event that the Foundation terminates this Agreement in accordance with the provisions of Paragraph A above, or in the event that the Foundation has not terminated this Agreement and there is a material diminution of the gallery space at the Donors' Gallery for other than a temporary period of time, the Trustees shall thereafter use their best efforts to locate, house and display the entire Collection at the Museum in accordance with the provisions of Paragraph 2.A.

Husband and Wife executed identical wills on Date 4. Under section 2.1 of Husband's will, Husband bequeaths his interest in their residence and art gallery to his spouse, if she survives him, and if not, to Foundation.

Section 2.2 provides, in part, that if his spouse survives him, Husband will give all of his tangible personal property, including his works of art comprising the Collection, to his spouse upon his death.

Section 2.3.A (i) provides that if his spouse does not survive him, Husband will give the Collection to Museum subject to the Agreement, as such Agreement has been or may be amended from time to time.

Section 2.3.A (ii) provides that if for any reason the Trustees of Museum decline to accept the Collection, Husband will give the Collection to Foundation.

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Section 3.2.A provides that if his spouse does not survive him, Husband will give the lesser of his entire residuary estate and \$a to Foundation.

Husband and Wife are still living. Museum and Foundation have received determination letters from the Service stating that they are qualifying tax-exempt organizations under section 501(c)(3).

LAW AND ANALYSIS

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

Section 2033 includes in a decedent's gross estate, the value of all property to the extent of the interest therein of the decedent at the time of his death. Section 2031(a) provides that the value of the gross estate shall be determined by including the value at the time of death of all property, real or personal, tangible or intangible, wherever situated.

Section 20.2031-1(b) of the Estate Tax Regulations provides generally that the value of every item of property includible in a decedent's gross estate is its fair market value. The fair market value is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of the relevant facts.

Section 2055(a)(2) provides that for purposes of the tax imposed by 2001, the value of the taxable estate is to be determined by deducting from the value of the gross estate the amount of all bequests, legacies, devises, or transfers to or for the use of any corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art, no part of which inures to the benefit of any private stockholder or individual, which is not disqualified for tax exemption under 501(c)(3) by reason of attempting to influence legislation, and which does not participate in, or intervene in any political campaign on behalf of (or in opposition to) any candidate for public office.

Section 20.2055-1(a) provides that a deduction is allowed under 2055(a) for the value of property included in the decedent's gross estate and transferred by the decedent to certain charitable entities. In general, the amount allowable as an estate tax charitable deduction under 2055 is the fair market value of the property passing to charity. Under certain scenarios, this value may not be the same as the value determined for estate tax inclusion purposes under 2031. See Ahmanson Foundation v. United States, 674 F.2d 761,768 (9th Cir. 1981); Estate of Schwan v. Commissioner, 82 T.C.M. (CCH) 168 (2001). See also, Estate of DiSanto v. Commissioner, 78 T.C.M. (CCH) 1220 (1999) (applying these principles in the case of the estate tax marital deduction); Deukmejian v. Commissioner, 41 T.C.M. (CCH) 738 (1981); Cooley v. Commissioner, 33 T.C. 223, 225 (1959), aff'd per curiam, 283 F.2d 945 (2nd Cir. 1960)

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(dealing with the effect of restrictions on marketability on the amount of the income tax charitable contribution deduction.)

In the present case, under the terms of both Husband's and Wife's will, the works of art comprising the Collection will pass to the Museum upon the death of the survivor of the Taxpayers. Museum is an organization described in section 501(c)(3). If the Museum does not accept the Collection, then the Collection will pass to the Foundation, an organization described in section 501(c)(3). Under the Agreement, Museum may not sell any of the Collection and may loan art in the Collection under specially defined circumstances. Further, under the Agreement, if Museum defaults on its obligation, the Collection reverts to the Foundation. Under no circumstances will the Collection revert to the Taxpayers or inure to the benefit of other private individuals. Accordingly, based upon the facts submitted and the representations made, we conclude that:

1. The value of the proposed bequest upon the death of the survivor of Taxpayers to the Museum (or if the Museum refuses to accept the contribution, to the Foundation), of the Taxpayer's interest in the works of art comprising the Collection, subject to the conditions of the Agreement, will be deductible from the Taxpayer's gross estate under section 2055.
2. The amount of the deduction under section 2055 for the proposed bequest, upon the death of the survivor of the Taxpayers, to the Museum (or if the Museum refuses to accept the contribution, to the Foundation), of the Taxpayer's interest in the works of art comprising the Collection, will be equal to the full fair market value of the Taxpayer's interest in the works of art comprising the Collection includible in the Taxpayer's gross estate under sections 2031 and 2033.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to the taxpayer and to the taxpayer's other authorized representative.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, no opinion is expressed or implied concerning the donation of the Donors' Gallery and Taxpayers' residence to the Foundation.

This ruling is based on the facts and 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. If the taxpayer is in doubt whether there has been a change in material fact or law, a request for reconsideration of this ruling should be submitted to this office.

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.

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

Sincerely yours,

Lorraine E. Gardner
Senior Counsel
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure:
Copy of letter for section 6110 purposes