

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B04 –PLR-131656-02

Date: DECEMBER 24, 2003

Re:

LEGEND:

Decedent =
Trustee =
Trust =
Town =
Decedent's Property =

Protected Acres =

Town Agency 1 =
Town Agency 2 =
Town Agency 3 =

Town Officer =
State =
Area =
City =
State Constitution =

State Statute 1 =

State Statute 2 =

Town Enactment =

Concerns About Further Development=

Trustee represents that, before there can be any construction on the Protected Acres, Town must be consulted and must issue a site clearance release so that a building permit can be obtained. The conservation easement provides that the grantor is not permitted to transfer any portion of the Protected Acres, or to grant an easement over any portion of the Protected Acres, to any adjacent property or property owner without a restriction contained in the terms of any such transfer or easement. The restriction must forbid the use of the property to provide ingress or egress that would permit the subdivision of any other parcel to accommodate its change of use into anything other than a site for one single family residence per existing parcel. The grantor retains all incidents of ownership of the Protected Acres not restricted or removed by the terms of the conservation easement or inconsistent with its purposes.

The grantee is given access to the Protected Acres to ensure that the terms of the conservation easement are met and the grantee is given the right to enforce the terms of the easement. Trustee represents that Town and the Conservation Fund have financial resources available to enforce the restrictions contained in the conservation easement. Further, the deed provides that any transferee or assignee must: (1) assume the responsibilities of the Conservation Fund; (2) be a "qualified organization" under § 170(h)(3) be eligible to hold the easement under State law; and (4) have the resources to enforce the restrictions.

Town contains an area of approximately e square miles and is located in an urban area of approximately b people. Approximately c acres (d%) of Town's e square-mile area is protected by the Conservation Fund. There are approximately f people residing in the area of Town. Town includes many homes that were constructed in Date 4 on large lots in excess of the a-acre minimum provided by the zoning requirements of Town. Town buffers the concentrated land use development of adjoining communities in Area and City. In Town's Conservation Plan, Town is described as a Continuing Natural Area.

Town is a municipal corporation and a suburb of City, established under the laws of State. Under the State Constitution, Town possesses sovereignty to exercise all powers of local self-government, including police powers, the power of taxation, and the power of eminent domain. Town administers its finances through Town Accounting Procedures.

Town's charter, adopted on Date 5, states the Charter Objectives. In furtherance of the Charter Objectives, Town adopted the Conservation Policy and Conservation Plan, which are intended to provide a coherent land use planning framework for Town's use in making land use decisions. Because of its Conservation Policy and Conservation Plan, Town has Concerns About Further Development.

Under State law, a conservation easement may be granted to a municipal corporation. State Statute 1. A conservation easement is defined as including a right or interest in land held for the public purpose of retaining land in its scenic, open or wooded condition, that imposes a limitation on the use or development of the land to achieve one or more of such purposes, and which includes appropriate provisions for the holder to enter the property subject to the conservation easement at reasonable times to ensure compliance with its provisions. State Statute 2.

Rulings requested

You have asked us to rule that:

- (1) the Conservation Fund is a "qualified organization" as defined in § 170(h)(3)(A);
- (2) the transfer of the conservation easement is a transfer of a "qualified real property interest" eligible for the deduction for transfers for charitable uses allowed under § 2055(a) in accordance with § 2055(f); and
- (3) the Protected Acres are eligible for the valuation exclusion allowed under § 2031(c)(1).

Ruling (1)

Section 170(a)(1) allows a deduction for a "charitable contribution", as defined in § 170(c). Under § 170(f)(3)(A), a taxpayer who contributes, not in trust, less than the taxpayer's entire interest in property generally is not allowed a deduction; however, § 170(f)(3)(B)(iii) provides an exception to this rule in the case of a qualified conservation contribution.

Under § 170(h)(1) and § 1.170A-14(a) of the Income Tax Regulations, a "qualified conservation contribution" is a contribution of (1) a qualified real property interest, (2) to a qualified organization, (3) exclusively for conservation purposes.

Section 170(h)(2)(C) defines the term "qualified real property interest" to include a restriction granted in perpetuity on the use of real property. Section 1.170A-14(b)(2) states that a qualified real property interest includes a perpetual conservation restriction, which is a restriction granted in perpetuity on the use that may be made of real property, including an easement. In this case, the contribution is of an easement for the preservation of open space providing for restrictions to be imposed in perpetuity on the

use of real property. Thus, the contribution is of a qualified real property interest within the meaning of § 170(h)(2)(C) and § 1.170A-14(b)(2).

Under § 170(h)(3)(A) and § 1.170A-14(c)(1)(i), the term "qualified organization" includes a governmental unit described in § 170(b)(1)(A)(v). Under § 170(c)(1), a governmental unit includes a state or political subdivision thereof. Section 1.103-1(b) provides that the term "political subdivision" denotes any division of any state or local governmental unit which is a municipal corporation or which has been delegated the right to exercise part of the sovereign power of the unit.

In this case, Town, as a municipal corporation, is a governmental unit and, thus, a qualified organization. If the Conservation Fund is an integral part of Town, then contributions to the Conservation Fund are treated as contributions to a qualified organization. Generally, if income is earned by an enterprise that is an integral part of a state or political subdivision of a state, that income is not taxable in the absence of specific statutory authorization to tax that income. See Rev. Rul. 87-2, 1987-1 C.B. 18; Rev. Rul. 71-131, 1971-1 C.B. 28; and Rev. Rul. 71-132, 1971-1 C.B. 29.

Rev. Rul. 87-2 holds that a fund established and administered by a state's supreme court is an integral part of the state and not a separate entity because the court created the fund, selects and removes the governing members, controls the investments and disbursements, monitors the daily operations, and may terminate the fund. In determining whether an enterprise is an integral part of a state, it is necessary to consider all of the facts and circumstances, including the state's degree of control over the enterprise and the state's financial commitment to the enterprise.

In this case, the Conservation Fund was formed by Town pursuant to the Town Enactment. Town is trustee of the Conservation Fund, which is administered by Town Officer. Town Officer, Town Agency 1 and Town Agency 2 (comprised of individuals appointed by the Mayor) oversee the use of the Conservation Fund's assets. All expenditures and disbursements from the Conservation Fund must be made under Town Officer's signature. These factors demonstrate Town's substantial control over the Conservation Fund.

Town provides annual cash transfers to the Conservation Fund and provides services to maintain the properties protected by the Conservation Fund. These factors demonstrate that Town has made a significant financial commitment to the Conservation Fund.

Because Town exercises substantial control over the Conservation Fund and has made a significant financial commitment to it, it is an integral part of Town. Therefore, contributions to the Conservation Fund are treated as contributions to Town.

To be an eligible donee under § 1.170A-14(c)(1), a qualified organization also must have a commitment to protect the conservation purposes of the donation, and must have the resources to enforce the restrictions. The Conservation Fund and Town

both have evidenced a commitment to protect the conservation purposes of the donation.

Trustee represents that Town has actively monitored its green areas and sought to enforce restrictions where applicable. The Conservation Fund has acquired by gift or purchase a total of approximately c acres, which constitutes approximately d% of Town's land area. Town has demonstrated a commitment to conservation through written policies set forth in Town's charter, its Conservation Policy and its Conservation Plan. Town is expressly authorized to accept conservation easements and has law enforcement authority and the resources to enforce the restrictions. Town specifically requested that the terms of the conservation easement restrict any use of the Protected Acres that would facilitate the subdivision of neighboring parcels. Any proposed construction on the Protected Acres will require that a building permit be obtained. For this to occur, Town administration must be consulted and a site clearance release issued. Thus, Town will be able to restrict any construction or development in violation of the terms of the conservation easement.

Under § 1.170A-14(c)(2), the donor also must prohibit transfers of the easement by the donee, unless, in the subsequent transfer, the donee requires that the conservation purpose continues to be carried out, and the subsequent transferee qualifies as an eligible donee under § 1.170A-14(c)(1). The deed of easement contains such a restriction. Consequently, we conclude that the conservation easement conveyed to the Conservation Fund was made to a "qualified organization" under § 170(h)(3)(A).

Section 170(h)(1)(C) provides that a qualified conservation contribution must be exclusively for "conservation purposes." A conservation purpose, as defined in § 170(h)(4)(A)(iii)(II), includes the preservation of open space (including farmland and forest land) where such preservation is pursuant to a clearly delineated federal, State, or local governmental conservation policy, and where it will yield a significant public benefit.

Section 1.170A-14(d)(4)(iii)(A) states that the requirement that the preservation of open space be pursuant to a clearly delineated governmental policy is intended to protect the types of property identified by public representatives as worthy of preservation or conservation. A general declaration of conservation goals by a single official or legislative body is not sufficient to meet this requirement. However, the requirement will be satisfied by donations that further a specific, identified conservation project, such as the preservation of land within a district that is locally recognized as being significant to that district. The donation of a perpetual conservation restriction to a

qualified organization pursuant to a formal resolution or certification by a local governmental agency established under state law specifically identifying the subject property as worthy of protection for conservation purposes will qualify as a preservation of open space pursuant to a clearly delineated governmental policy.

Section 1.170A-14(d)(4)(iii)(B) provides that acceptance of an easement by an agency of a state or local government tends to establish the requisite clearly delineated governmental policy, although such acceptance, without more, is not sufficient. The more rigorous the review process by the governmental agency, the more the acceptance of the easement tends to establish the requisite clearly delineated governmental policy, although such acceptance without more, is not sufficient.

In this case, Town has identified conservation goals and objectives, including the preservation of open space, which are reflected in the Town charter, the Conservation Policy, and the Conservation Plan. Town has actively promoted gifts to the Conservation Fund and has purchased property for the Conservation Fund. Town has inventoried all open space within its borders available for development and actively seeks contributions of such open space to the Conservation Fund. Town Agency 1, which is the governing body of Town, specifically identified the Protected Acres as open space worthy of conservation, actively sought its protection, and accepted the conservation easement on the Protected Acres by ordinance. Therefore, donation of the easement is pursuant to a clearly delineated governmental conservation policy under § 170(h)(4)(A)(iii)(II).

The flush language of § 170(h)(4)(A)(iii) states that preservation of open space also must yield a significant public benefit. Section 1.170A-14(d)(4)(iv) enumerates several factors to consider in determining whether an open space easement will yield a significant public benefit, some of which would be met by the donation of the easement. The regulations state that the preservation of an ordinary tract of land would not in and of itself yield a significant public benefit, but the preservation of ordinary land areas in conjunction with other facts that demonstrate significant public benefit or the preservation of a unique land area for public enjoyment would yield a significant public benefit.

Under § 1.170A-14(d)(4)(iv)(A), one of the factors to be considered is the uniqueness of the property to the area. The Protected Acres are unique in that a restriction on the use of the property will restrict the ability to restrict the subdivision of the adjacent g-acre parcel. In addition, the property is located in close proximity to other property owned by the Conservation Fund. Two other factors described in the regulations are the intensity of land development in the vicinity of the property (both existing development and foreseeable trends of development), and the population density in the area of the property. Town contains an area of approximately e square miles, and is located in an urban area of approximately b people, only f of whom reside within the area of Town. Town buffers the concentrated land use development of

adjoining communities in Area and City. Because of Town 's land use policy, the suburban sprawl in the metropolitan area has skipped over Town, and the rural enclave that Town has preserved serves an important regional function of preserving open space. Because of the uniqueness of Town, there is high demand for residential building lots in Town development of which the easement will help to prevent.

In addition, § 1.170A-14(d)(4)(vi) provides that the more specific the governmental policy, the more likely the governmental decision will tend to establish significant public benefit. As discussed earlier, Town Agency 1 specifically identified the Protected Acres as a worthy property for protection. Therefore, donation of the conservation easement will yield a significant public benefit. Accordingly, donation of the easement is for conservation purposes.

Section 170(h)(1)(C) provides that the contribution must be "exclusively" for conservation purposes. Section 170(h)(5)(A) provides that a "contribution shall not be treated as exclusively for conservation purposes unless the conservation purpose is protected in perpetuity." Section 1.170A-14(e)(2) provides that no deduction will be allowed if the contribution would accomplish one conservation purpose but would permit destruction of other significant conservation interests. Similarly, § 1.170A-14(d)(4)(v) provides that a deduction for an open space easement will not be allowed if the terms of the easement permit a degree of intrusion or future development that would interfere with the essential scenic quality of the land or with the governmental conservation policy that is being furthered by the donation.

Section 1.170A-14(g)(1) provides that any interest in the property retained by the donor and the donor's successors must be subject to legally enforceable restrictions that will prevent uses of the retained interest inconsistent with the conservation purposes of the donation.

In this case, by its terms, the easement is perpetual and only permits uses that are consistent with the purposes of the easement. Further, the easement provides that all incidents of ownership of the Protected Acres not restricted or removed by the terms of the easement, including agricultural uses, must be consistent with the conservation purpose of the easement. It does not permit any future development that would interfere with the conservation policies of Town and the Conservation Fund.

Accordingly, we conclude that Trustee has demonstrated that the contribution of the conservation easement is exclusively for conservation purposes and is enforceable in perpetuity within the meaning of § 170(h)(5)(A) and §§ 1.170A-14(e) & (g)(1).

Based upon the facts submitted and representations made in your ruling request, we conclude that the conservation easement Trustee conveyed to the Conservation Fund (1) was made to a "qualified organization" under § 170(h)(3)(A), and (2) is a

“qualified conservation contribution” as defined in § 170(h)(1) of a “qualified real property interest” as defined in § 170(h)(2)(C).

Rulings (2) and (3)

Section 2001 provides that a tax is imposed on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

Section 2031(c)(1) provides that if the executor elects, then, except as otherwise provided, there shall be excluded from the gross estate the lesser of: (A) the applicable percentage of the value of the land subject to a qualified conservation easement, reduced by the amount of any deduction under § 2055(f) with respect to such land, or (B) the exclusion limitation.

Section 2031(c)(2) provides that the term "applicable percentage" means 40 percent reduced (but not below zero) by 2 percentage points for each percentage point (or fraction thereof) by which the value of the qualified conservation easement is less than 30 percent of the value of the land determined without regard to the value of such easement and reduced by the value of any retained development right, as defined in § 2031(c)(5). The values taken into account under this provision are the values as of the date of contribution. The exclusion limitation is defined in § 2031(c)(3).

Section 2031(c)(6) provides that the election shall be made on or before the due date (including extensions) for filing the return of tax imposed by § 2001 and shall be made on such return.

Section 2031(c)(8)(A) provides that the term “land subject to a qualified conservation easement” means land with respect to which a qualified conservation easement has been made by an individual described in § 2031(c)(8)(C), as of the date of the election. Section 2031(c)(8)(B) provides that the term “qualified conservation easement” means 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) does not apply.

Section 2031(c)(8)(C)(iii) and (iv) lists as individuals described in that subparagraph the executor of the decedent’s estate, and the trustee of a trust the corpus of which includes the land to be subject to the qualified conservation easement.

Finally, § 2031(c)(9) provides that if a qualified conservation easement is granted after the date of the decedent’s death and on or before the due date (including extensions) for filing the Federal estate tax return, the deduction under § 2055(f) (discussed below) is to be allowed to the estate provided no income tax charitable deduction is allowed to any person with respect to the grant of the easement.

Section 2055(a) provides that, for purposes of the estate tax, the value of the taxable estate shall be determined by deducting from the value of the gross estate the amount of all transfers to charity.

Section 2055(f) provides that a deduction shall be allowed under § 2055(a) in respect of any transfer of a qualified real property interest (as defined in § 170(h)(2)(C)) which meets the requirements of § 170(h) (without regard to paragraph (4)(A) thereof).

Section 20.2055-2(e)(2)(iv) of the Estate Tax Regulations provides generally that an estate tax charitable deduction is allowable for a qualified conservation contribution as defined in § 1.170A-14.

In this case, as discussed above, Trustee's transfer to the Conservation Fund of a conservation easement in the Protected Acres constitutes a transfer of a qualified real property interest that meets the requirements of § 170(h) and that meets the definition of a qualified conservation contribution contained in § 1.170A-14. Consequently, in accordance with § 2031(c)(9), assuming no person has claimed an income tax deduction with respect to the transfer, a deduction is allowable under § 2055(f) with respect to the transfer by Trustee of the conservation easement on the Protected Acres.

In addition, the conservation easement on the Protected Acres transferred by the Trustee to the Conservation Fund constitutes a qualified conservation easement as defined in § 2031(c)(8)(B). Trustee is described in § 2031(c)(8)(C)(iv) as a person that can grant the easement. Therefore, assuming a timely election has been made under § 2031(c)(6), Decedent's estate will qualify for the exclusion provided in § 2031(c)(1). The amount excludible is the lesser of: (i) the applicable percentage of the value of the Protected Acres (the a acres subject to the conservation easement), reduced by the amount of any charitable deduction allowed under § 2055(f) with respect to the Protected Acres; and (ii) the exclusion limitation determined under § 2031(c)(3) for the year of Decedent's death.

No opinion is expressed concerning the federal tax consequences of the proposed transaction under any other provisions of the Code. A copy of this ruling should be attached to the taxpayer's federal estate tax return.

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.

Sincerely yours,

George Masnik
Branch Chief, Branch 4
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure
copy for section § 6110 purposes