

Internal Revenue Service

Department of the Treasury

Number: **200202032**
Release Date: 1/11/2002
Index Number: 2031.01-00, 2055.07.02

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:4 - PLR-125478-00

Date:

October 26, 2001

Re:

LEGEND:

Taxpayer =
Spouse =
Date 1 =
Date 2 =
Date 3 =
Date 4 =
X and Y Periods =
Museum =
Collection =

Gallery =
Court =

Foundation =
Agreement =

Dear :

This letter is in response to your authorized representative's letter dated November 8, 2000, in which a ruling was requested on the federal estate tax consequences of a proposed bequest contribution to Museum.

According to the facts submitted, Taxpayer currently owns an interest in each of 53 paintings, drawings and watercolors of various artists of the X and Y periods that are described collectively hereinafter as the "Collection". Taxpayer previously contributed all of his right, title and interest in and to a 50% undivided present interest in 32 of the works of art comprising the Collection, to Museum. With respect to those works,

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Taxpayer has retained the remaining 50% undivided interest. Taxpayer owns a 100% interest in the remaining works of art comprising the Collection.

Item SECOND, Paragraph C, of Taxpayer's Will dated Date 1, provides that:

Subject to the conditions set forth hereinafter, I give to [MUSEUM], if it is at my death and at the time of distribution a charitable organization within the meaning of § 501(c)(3), § 170(c)(2), § 2055(a)(2), and § 2522(a)(2) of the Internal Revenue Code, the following paintings, drawings, and watercolors to the extent owned by me, in whole or in part, at my death:

C. The 53 items of artwork comprising the Collection are listed following Paragraph

Item SECOND, Paragraph C.1. as amended by a Codicil dated Date 2 provides:

Prior to the delivery of the [Collection] to the Museum, the executors of my estate shall receive a written agreement, in form and content acceptable to them, from the duly authorized officers of the Museum, affirming the terms and conditions of the proposed agreement dated as of [Date 3] ("Agreement") between myself and the Museum relating to the [Collection] or the terms and conditions of said Agreement as it may be finalized and executed by the Museum and myself and as it may be subsequently amended or restated before my death. In preparing said written agreement, the executors of my estate may include additional reasonable administrative provisions not expressly set forth in the Agreement but determined by said executors, in their discretion, to be consistent with the terms and intent of the Agreement and any other written agreements I may enter into with the Museum during my lifetime provided, however, that the provisions of the Agreement or any modification thereto shall be consistent with the availability of a charitable deduction under § 2055(a)(2) of the Internal Revenue Code for the full value of the [Collection] to the Museum. To the extent any provision is inconsistent with obtaining such charitable deduction it shall be ignored.

Item SECOND, Paragraph C.2. of the Will provides as follows:

2. If the Museum should refuse to accept the [Collection] under the conditions set forth herein, or if the Museum

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should at my death or at the time of distribution not be a charitable organization within the meaning of section 501(c)(3), section 170(c)(2), section 2055(a)(2), and section 2522(a)(2) of the Internal Revenue Code then my executors, in their sole discretion, shall distribute the [Collection] to a charitable organization qualifying under section 501(c)(3), section 170(c)(2), section 2055(a)(2), and section 2522(a)(2) of the Internal Revenue Code.

The agreement referenced in Paragraph C.1. of Taxpayer's will, as amended by the codicil, was executed by Taxpayer and Museum on Date 4. The Agreement recites that Taxpayer has an ownership interest in a collection of works of art enumerated and described in Exhibit A attached to the Agreement (the Collection), and that the Taxpayer has previously made gifts to the Museum of a one-half undivided interest in certain of the works of art that are specified in Exhibit A. The Agreement provides that, if Taxpayer leaves a will giving his entire remaining interest in the works of art in the Collection to Museum, then Museum will be bound to maintain and display the Collection in furtherance of its § 501(c)(3) purposes, and in accordance with the terms of the Agreement. In general, the Museum is obligated to exhibit all of the works of art in the Collection at its primary exhibition facility in accordance with the following conditions.

1. All of the works of art in the Collection must be exhibited on a permanent and continuous basis to the public during Museum's normal business hours in accordance with its standard operating policies. However, works may be removed from display for such periods of time as may be appropriate for preservation, conservation, building renovation, photography or scholarly examination.
2. All of the works of art in the Collection must be exhibited together in a coherent and integrated manner, except that works may from time to time be exhibited on a brief, temporary basis in special exhibitions within the Museum.
3. Except as provided in #1 and #2 above, all works of art in the Collection must be continuously exhibited in gallery space in that area of the Museum designated "Gallery". The entrance or entrances to the gallery space housing the Collection must prominently identify the gallery as housing The Collection.
4. Whether on display, on special exhibition within the Museum or otherwise, each work of art in the Collection shall bear an appropriate plaque or sign which identifies the

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name of the work of art and that it is part of the "Collection."

5. The credit line for all reproductions of any work of art in the Collection shall be "The [Taxpayer] and [Spouse] Collection."

6. The Museum shall take all reasonable steps to assure that the identification and credit line obligations in #4 and #5 above are observed by all entities, and shall institute and prosecute all reasonable and practicable legal and equitable actions to enforce those obligations.

The Agreement also provides that notwithstanding the provisions of #1, #2, and #3 above, the Museum may loan on a temporary basis works of art in the Collection in accordance with its standard operating policies. If, for whatever reason, the Museum shall sell exchange or otherwise dispose of any works of art in the Collection, it shall sell exchange or dispose of such work of art only to acquire other examples of works of art that are typified by the Collection, are consistent with the spirit of the Collection, and are of a value substantially equal to the value of the deaccessioned work of art in the Collection. Any such acquired works of art shall then be subject to the terms and conditions under the Agreement. Finally, any and all insurance proceeds paid for the loss, damage, or destruction of any work or works of art in the Collection will be used by the Museum to repair the work or, if the repair is not deemed advisable by the Museum, to acquire one or more examples of works of art that are typified by the Collection and are consistent with the spirit of the Collection, and the acquired work or works shall then be subject to the terms and conditions of the Agreement.

Under the Agreement, after the death of Taxpayer, the Museum agrees to submit itself to the jurisdiction of Court, or any other court having probate jurisdiction over Taxpayer's estate in matters relating to the Collection or the Agreement. The Museum agrees that upon any action or petition by Taxpayer's executors or by the Foundation, a nonprofit corporation, the court may direct: (a) specific performance of any provision of the Agreement which the Museum may breach; or (b) injunctive relief against the Museum in the curing of such breach.

The Agreement also provides that if at the time of Taxpayer's death, Taxpayer's will contains a bequest of his entire remaining interest in the works of art in the Collection, the Museum agrees to accept the bequest and to discharge all of its obligations under the terms of the Agreement. It is expressly understood and agreed that no provision or condition under the Agreement will divest the Museum of its ownership of the Collection if it receives the bequest under Taxpayer's will. In addition, Taxpayer, Taxpayer's estate, and Taxpayer's heirs or legatees will not have a reversionary interest in the Collection.

You have requested the following rulings

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1. The value of the proposed contribution, upon Taxpayer's death, to the Museum of Taxpayer's interests in the works of art comprising the Collection, subject to the conditions of the Agreement, will be deductible from Taxpayer's gross estate under section 2055.

2. The amount of the deduction under section 2055 for the proposed contribution, at Taxpayer's death, to the Museum, of Taxpayer's interests in the works of art comprising the Collection, subject to the terms and conditions set forth in the Agreement, will be equal to the full fair market value of the Taxpayer's interest in the works of art comprising the collection includible in Taxpayer's gross estate under §§ 2031 and 2033.

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 a 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, T.C.M. 2001-174. See also, Estate of DiSanto v. Commissioner, T.C.M.

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1999-421, (applying these principles in the case of the estate tax marital deduction); Deukmejian v. Commissioner, T.C.M. 1981-24; Cooley v. Commissioner, 33. T.C. 223, 225 (1959), *aff'd. per curiam*, 283 F.2d 945 (2nd Cir. 1960), (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 Taxpayer's will, the works of art comprising the Collection will pass to Museum upon Taxpayer's death, subject to the Museum's acceptance of the restrictions contained in the Agreement, as described above. Under Item 2, Paragraph C.2., of Taxpayer's will, if Museum does not accept the Collection, then the Collection is to be distributed to another charitable organization described in §§ 501(c)(3), 170(c)(2), and 2522(a)(2), selected by the executor. Under the Agreement the Museum cannot be divested of its ownership of the Collection. The Agreement authorizes the sale of works of art in the Collection and only limits the use of the proceeds of sale to the acquisition of works of art that are typified by the Collection that are equal to the value of the deaccessioned work of art in the Collection. Further, the Agreement does not prohibit the Museum from loaning works of art that comprise the Collection, as long as loans are made on a temporary basis in accordance with the Museum's standard operating policies.

Accordingly, based upon the facts submitted and the representations made, we conclude that:

1. The value of Taxpayer's interests in the works of art comprising the Collection that pass to Museum pursuant to Item SECOND, Paragraph C. of Taxpayer's will, subject to the terms of the Agreement, will qualify for the estate tax charitable deduction under section 2055.

2. The amount of the estate tax charitable deduction allowable under § 2055, with respect to Taxpayer's interests 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 that are includible in Taxpayer's gross estate under §§ 2031 and 2033.

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

Except as specifically ruled herein, we express no opinion as to the consequences of this transaction under the cited provisions of the Code or under any other provisions of the Code.

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

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request for reconsideration of this ruling should be submitted to this office.

Sincerely yours,
GEORGE MASNIK
Branch Chief
Branch 4
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure

Copy of letter for section 6110 purposes