

Internal Revenue Service

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Washington, DC 20224

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Person To Contact:

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Date:

July 18, 2007

Taxpayer =

Decedent =

D1 =

D2 =

D3 =

D4 =

Dear

This letter responds to a letter dated November 3, 2006, and subsequent correspondence, submitted on behalf of Taxpayer by its authorized representative, requesting a ruling under §§ 691 and 1014 of the Internal Revenue Code.

The information submitted states that Taxpayer, Decedent's revocable trust, entered into a contract to sell a plot of real property on D1, with an intended closing date of D2. Before D2, however, a gas pipeline was discovered underneath the property, causing the parties to delay the sale until Taxpayer, the buyer and the pipeline's operating company could resolve a number of issues. The parties needed to address matters such as providing for an easement for the pipeline company to enter onto the property as well as providing that the pipeline company would provide restitution for any damage to the property. Before the parties could resolve these issues, Decedent died on D3. The sale did not actually close until D4.

Section 691(a)(1) provides that the amount of all items of gross income in respect of a decedent (IRD) which are not properly includible in respect of the taxable

period in which falls the date of the decedent's death or a prior period (including the amount of all items of gross income in respect of a prior decedent, if the right to receive such amount was acquired by reason of the death of the prior decedent or by bequest, devise, or inheritance from the prior decedent) shall be included in the gross income, for the taxable year when received, of: (A) the estate of the decedent, if the right to receive the amount is acquired by the decedent's estate from the decedent; (B) the person who, by reason of the death of the decedent, acquires the right to receive the amount, if the right to receive the amount is not acquired by the decedent's estate from the decedent; or (C) the person who acquires from the decedent the right to receive the amount by bequest, devise, or inheritance, if the amount is received after a distribution by the decedent's estate of such right.

Section 1.691(a)-1(b) of the Income Tax Regulations provides that the term "income in respect of decedent" refers to those amounts to which a decedent was entitled as gross income but which were not properly includible in computing the decedent's taxable income for the taxable year ending with the date of the decedent's death or for a previous taxable year under the method of accounting employed by the decedent. Thus, the term includes income to which the decedent had a contingent claim at the time of the decedent's death.

Section 1014(a) provides that the basis of property in the hands of a person acquiring the property from a decedent or to whom the property passed from a decedent shall, if not sold, exchanged, or otherwise disposed of before the decedent's death by such person, be the fair market value of the property at the date of the decedent's death.

Section 1014(b)(1) provides, in part, that for purposes of section 1014(a), property acquired by bequest, devise or inheritance, or by the decedent's estate from the decedent shall be considered to have been acquired from or to have passed from the decedent.

In Rev. Rul. 78-32, 1978-1 C.B. 198, prior to death, a decedent had entered into a binding contract to sell real estate, had substantially completed all of the substantive prerequisites of consummation of the sale, and was unconditionally entitled to the proceeds of the sale at the time of death. The ruling holds that the gain realized from the sale of the real estate that was completed by the decedent's executor is income in respect of a decedent within the meaning of § 691(a).

In Taxpayer's case, important issues needed to be addressed before the sale of the property could be closed. The closing was delayed until D4 because of these issues. Taxpayer needed to attend to substantive as well as ministerial matters. The pipeline was not discovered until after the original contract was entered into; this

created economically material contingencies that might have disrupted the sale prior to Decedent's death.

Based solely on the facts and representations submitted, we conclude that any gain realized from the sale of the property after Decedent's death does not constitute income in respect of a decedent within the meaning of § 691. We further conclude that basis of the property in Taxpayer's hands before the sale should be determined under § 1014(a).

Except as specifically ruled above, we express no opinion concerning the federal tax consequences of the transactions described above under any other provisions of the Code.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent. Pursuant to a power of attorney on file, a copy of this letter is being sent to Taxpayer's authorized representative.

Sincerely,

Bradford R. Poston
Senior Counsel, Branch 2
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures: 2

Copy of this letter

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