

If amounts are payable on a PPVA upon death, the value of the PPVA is generally included in the decedent's gross estate for U.S. federal estate tax purposes.³¹ There is no fair market value basis step-up in the PPVA as of the date of death, in contrast to the treatment of other assets.³² Under section 691(c) of the Code, a deduction with respect to IRD is permitted for the allocable portion of estate taxes resulting from the inclusion of the PPVA in the annuitant's estate.

a. Estate Tax Deduction if Tax-Exempt Charity is Beneficiary

For U.S. federal estate tax purposes, the estate may offset the inclusion of the PPVA in the estate for estate tax purposes if the beneficiary of the PPVA is a tax-exempt charity. Generally, for purposes of the U.S. federal estate tax, under section 2055 of the Code the value of the taxable estate is determined by deducting from the gross estate the amount all bequests, legacies, devises, or transfers to public, charitable and religious uses. The IRS has issued private letter rulings holding that the transfers of annuities to a tax-exempt charity by an estate resulted in such a deduction.³³

* * * * *

We express our opinion herein only as to those U.S. federal income tax and federal estate tax matters specifically set forth above and no opinion should be inferred as to the tax consequences of the PPVA under any state, local or non-U.S. law, or with respect to other areas of U.S. federal taxation. This opinion is based on the Code, applicable Treasury regulations, administrative interpretations and court decisions, each as in effect as of the date of this opinion, all of which are subject to change at any time, including a change applied retroactively. This opinion is based on certain assumptions and representations as to factual matters described above. If any of the assumptions or representation is incorrect, incomplete, inaccurate or is violated, the validity of the conclusions reached in this opinion may be jeopardized. This opinion represents our legal judgment but is not binding on the IRS or any court, and there can be no certainty that the IRS will not challenge the conclusions reflected in this opinion or that a court would not sustain such a challenge.

Circular 230 Disclosure

³¹ I.R.C. § 2039.

³² I.R.C. § 1014(b)(9)(A).

³³ P.L.R. 200052006 (Jan. 2, 2001). The IRS has reached a similar conclusion for IRAs in which and pensions rights bequeathed to charities upon death. *See, e.g.*, P.L.R. 200002011 (Jan. 18, 2000) (taxpayer designated charities as beneficiary of deferred compensation and bequeathed nonstatutory options to charities; value of deferred compensation and options includible in gross estate and estate eligible for deduction under section 2055(a) for the deferred compensation and value of options); P.L.R. 199939039 (Oct. 4, 1999) (tax-exempt foundations named as beneficiaries of IRAs and qualified retirement plans upon death of taxpayer; IRA and plan included in estate and estate eligible for deduction for proceeds of the IRA account and qualified retirement plan passing to foundation); P.L.R. 9818009 (May 1, 1998) (same); P.L.R. 9723038 (June 6, 1997) (IRA with charities as contingent beneficiaries after spouse—estate of the survivor of taxpayer or spouse will be entitled to deduction under section 2055(a) equal to value of IRA that passes to charities); P.L.R. 9633006 (Aug. 16, 1996) (tax-exempt foundation designated as beneficiary upon death of owner of Keogh qualified employer plan for self-employed, value of plan included in estate and estate eligible for charitable deduction under section 2055(a)); P.L.R. 9341008 (July 14, 1993) (tax-exempt foundation created by taxpayer is beneficiary of IRA, value of IRA includible in estate and estate eligible for deduction of proceeds of IRA paid to charity under section 2055(a)).