

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

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Date:
June 28, 2007

Legend

Taxpayer =
Decedent =
Foundation =
Trust =

State =
Date 1 =
Date 2 =
Statute =

Dear

This is in response to your authorized representative's letter dated February 23, 2007, and subsequent correspondence in which you request rulings concerning §§ 2518 and 2055 of the Internal Revenue Code. The facts and representations submitted are as follows.

Decedent, a resident of State, died testate on Date 1. Under decedent's will, the residue of decedent's estate is to be distributed to Trust. Paragraph 11 of Trust provides, in pertinent part, that one-third of the Trust residue be distributed outright to Taxpayer, except that if Taxpayer disclaims all or a portion of the property that would have otherwise passed to Taxpayer, the disclaimed property shall be distributed to Foundation.

On Date 2, the Internal Revenue Service issued a determination letter indicating that Foundation is exempt from federal income tax under § 501(a) as an organization described in § 501(c)(3) and that Foundation is a private foundation within the meaning of § 509(a).

Taxpayer, who is one of the directors of Foundation, proposes to disclaim a portion of the property passing under Trust. Prior to the time that Taxpayer executes the disclaimer, the directors of Foundation propose to amend Foundation's bylaws. Pursuant to Article 5.1 of the proposed bylaws, the property passing to Foundation pursuant to Taxpayer's disclaimer will at all times during Taxpayer's lifetime be segregated from the other property of the Foundation and be maintained as a separate fund of Foundation. The separate fund will be overseen by a committee that shall have sole authority over the disposition and disbursement of the separate fund. Taxpayer shall have no rights or powers with respect to the disposition or disbursement of the separate fund or with respect to the election or removal of members of the separate fund committee.

You have requested the following rulings:

1. the proposed disclaimer will constitute a qualified disclaimer under § 2518; and
2. the property passing to Foundation as a result of the disclaimer will qualify for the estate tax charitable deduction under § 2055.

RULING REQUEST 1

Section 2046 provides that disclaimers of property interests passing upon death are treated as provided in § 2518.

Section 2518(a) provides that, if a person makes a qualified disclaimer with respect to any interest in property, the disclaimed interest is treated as if it had never been transferred to the person making the qualified disclaimer for purposes of the federal estate, gift, and generation-skipping transfer tax provisions.

Section 2518(b) provides that a "qualified disclaimer" means an irrevocable and unqualified refusal by a person to accept an interest in property, but only if: (1) the disclaimer is in writing; (2) the writing is received by the transferor of the interest, his legal representative, or the holder of the legal title to the property to which the interest relates not later than 9 months after the date on which the transfer creating the interest in the person making the disclaimer is made, or the date on which the person making the disclaimer attains age 21; (3) the person making the disclaimer has not accepted the interest or any of its benefits; and (4) as a result of the disclaimer, the interest passes without any direction on the part of the person making the disclaimer to the decedent's spouse or to a person other than the person making the disclaimer.

Section 25.2518-2(d)(2) of the Gift Tax Regulations provides, in part, that, if a beneficiary who disclaims an interest in property is also a fiduciary, that person cannot

retain a wholly discretionary power to direct the enjoyment of the disclaimed interest. For example, a disclaimer by a beneficiary who is also a fiduciary would not meet the requirements of a qualified disclaimer if the fiduciary retains a discretionary power to allocate enjoyment of that interest among members of a designated class.

Section 25.2518-2(e)(1)(i) provides that the requirements of a qualified disclaimer will not be satisfied if the disclaimant, either alone or in conjunction with another, directs the redistribution or transfer of the property or interest in property to another person or has the power to direct the redistribution of the property or interest in property to another person unless such power is limited by an ascertainable standard.

Section 25.2518-3(a)(2) provides that a disclaimer is not a qualified disclaimer under § 2518 if the beneficiary disclaims income derived from specific property transferred in trust while continuing to accept income derived from the remaining properties in the same trust unless the disclaimer results in such property being removed from the trust and passing, without any direction on the part of the disclaimant, to persons other than the disclaimant or to the spouse of the decedent. A disclaimer of both an income interest and a remainder interest in specific trust assets is not a qualified disclaimer if the beneficiary retains interests in other trust property unless, as a result of the disclaimer, such assets are removed from the trust and pass, without any direction on the part of the disclaimant, to persons other than the disclaimant or to the spouse of the decedent.

Section 25.2518-3(b) provides that a disclaimer of an undivided portion of a separate interest in property that meets the other requirements of a qualified disclaimer under § 2518(b) and the corresponding regulations is a qualified disclaimer. An undivided portion of a disclaimant's separate interest in property must consist of a fraction or percentage of each and every substantial interest or right owned by the disclaimant in such property and must extend over the entire term of the disclaimant's interest in such property and in other property into which such property is converted.

In Rev. Rul. 72-552, 1972-2 C.B. 525, the decedent, who was the president and a director of a corporation organized under § 501(c)(3), transferred property to the corporation. In his capacity as president and a director, the decedent, in conjunction with the other directors of the corporation, had the power to direct the disposition of the corporation's funds for charitable purposes. The ruling holds that, because the decedent retained the right, in conjunction with others, to designate the entities that would possess or enjoy the property transferred to the corporation, the property transferred by the decedent to the corporation was included in the decedent's gross estate at his death under § 2036.

Under Statute, any person to whom an interest in property devolves by whatever means may disclaim it in whole or in part by means of a written disclaimer. The property

subject to the disclaimer passes as if the person disclaiming had predeceased the decedent.

Here, Taxpayer proposes to timely disclaim a portion of the property passing under Trust. It is represented that Taxpayer has not and will not have accepted any of the benefits of the disclaimed property prior to executing the disclaimer. Under Statute, Taxpayer is treated as predeceasing Decedent with respect to the disclaimed property. As a result of the disclaimer, the disclaimed property and any income attributable to it will be removed from Trust and pass to Foundation. Pursuant to the terms of the proposed amendments to Foundation's bylaws, the disclaimed property will be held in a separate fund, separate and apart from the other Foundation assets. The power to make distributions of income and/or principal from the separate fund and to select the recipients of such distributions will be held exclusively by the separate fund committee. Taxpayer will have no rights or powers with respect to the disposition or disbursement of the separate fund or with respect to the election or removal of members of the separate fund committee. Accordingly, if Taxpayer executes the disclaimer and it is delivered to the appropriate party within 9 months of the date of Decedent's death, Taxpayer's disclaimer will constitute a qualified disclaimer under § 2518.

RULING REQUEST 2

Section 2055(a) provides that the value of the taxable estate shall be determined by deducting from the value of the gross estate the amount of all bequests, legacies, devises, or transfers to or for a corporation or certain other organizations organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes. A foundation described in § 501(c)(3) is one that is organized and operated exclusively for these purposes.

Section 20.2055-2(c)(1)(i) of the Estate Tax Regulations provides that in the case of decedents dying after December 31, 1976, the amount of a bequest, devise, or transfer for which a deduction is allowable under § 2055 includes an interest which falls into the bequest, devise, or transfer as the result of a qualified disclaimer under § 2518.

Under Statute, Taxpayer is treated as predeceasing Decedent with the result that under the terms of Trust the disclaimed property will pass to Foundation. It is represented that Foundation is an organization described in § 501(c)(3). Accordingly, the property passing to Foundation as a result of the disclaimer will qualify for the estate tax charitable deduction under § 2055.

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.

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

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

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.

Sincerely,

James F. Hogan
Senior Technician Reviewer, Branch 4
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure (1)