

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

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PLR-161874-04

Date:

February 03, 2005

Re: Private Letter Ruling

LEGEND

Foundation =

State =

Date 1 =

Decedent =

Date 2 =

Daughter =

Son-In-Law =

Date 3 =

\$a =

State Court =

Dear :

This is in response to your letter of November 16, 2004, in which you requested rulings under §§ 2518 and 2055 of the Internal Revenue Code (Code).

The facts submitted and representations made are summarized as follows: Foundation, a § 501(c)(3) exempt foundation, was formed under the laws of State on or about Date 1.

Decedent died testate on Date 2. Daughter and Son-In-Law were appointed co-executors of Decedent's estate.

Item VI of Decedent's last will and testament provides, in part, that all the rest and residue of Decedent's estate shall be distributed to Daughter. In the event that Daughter does not survive Decedent, the residue of Decedent's estate shall be distributed to Foundation. In addition, if Daughter disclaims all or any portion of the residuary estate pursuant to the provisions of § 2518, then such disclaimed portion shall be distributed to Foundation.

Daughter currently serves as president of Foundation. Daughter is also one of six directors of Foundation. Son-In-Law currently serves as vice president of Foundation. He is also a director of Foundation. The remaining directors are Daughter and Son-In-Law's four adult children.

Foundation's charter of incorporation provides generally that the purpose of Foundation is (i) the encouragement, support and maintenance of boys' and girls' clubs for the uplift and improvement of the mental, social, and moral, physical and economic condition of underprivileged boys and girls; and (ii) the support of any literary or scientific undertaking, such as a college or university with the power to confer degrees, the establishment of a library, the promotion of painting, music or the fine arts; and (iii) for the support of any benevolent, charitable or educational undertaking, such as a hospital for the sick or the aged, an orphan asylum, houses of refuge, trade schools, and for any other similar purpose, and shall be operated for religious, charitable, literary or educational purposes, or for the prevention of cruelty to children or animals.

Foundation's charter of incorporation further provides that the charter is subject to modification and amendment.

Article II, Section 2 of the bylaws provides, in part, that the means, assets, income, or other property of the Corporation shall not be employed directly or indirectly for any other purpose than to accomplish the legitimate objects of its creation.

Article VIII of the bylaws provides that the directors of Foundation may create such committees and delegate to them such powers as the Board may, by resolution, from time to time determine.

Article IX of the bylaws provides that the bylaws may be amended at any regular meeting, a quorum being present, by a majority vote of the directors in attendance at such meeting, provided that notice of such proposed amendment shall have been mailed to every member of the Board of Directors at least two days before such meeting.

On Date 3, Daughter filed a disclaimer in the amount of \$a with State Court. Date 3 is a date not later than nine months from the date on which the transfer creating Daughter's interest in Decedent's residuary estate was made. Prior to the filing of the disclaimer, Daughter did not accept any of the disclaimed amount or any of the benefits. Decedent's estate has not yet transferred any of the disclaimed assets to Foundation.

In connection with the disclaimer, Foundation's Board of Directors proposes to amend the charter of incorporation by adding the following new paragraph:

The Board of Directors and Officers of the Corporation shall take whatever steps are necessary to ensure that no person will have any wholly discretionary power

to direct the distribution of any funds of the Corporation that were received by the Corporation by reason of a disclaimer of property made by that person.

Article VI, Section 3-A of the bylaws will be amended by adding the following new subsection:

- (a) Special Fund. Notwithstanding anything herein to the contrary, the Treasurer shall segregate from the Corporation's other assets any property the Corporation receives as a result of a disclaimer by any person. That disclaimed property shall be held in a separate account on the Corporation's books (each such separate account to be designated a "Special Fund"). No distributions (other than for regular expenses of that particular Special Fund) shall be made from the Special Fund unless directed by the Special Fund Committee (as provided for in Section 1 of Article VIII) of that particular Special Fund.

Similarly, Article VIII of the bylaws shall be amended by adding the following sections:

Section 1. Special Fund Committee.

- (a) The Board shall create a "Special Fund Committee" to determine the disposition of any assets of the Corporation held in each "Special Fund" created under the provisions of this Article. Any person may serve on the Special Fund Committee, except for a Disqualified Person.
- (b) A "Disqualified Person" with respect to any particular Special Fund Committee is any person who has made a disclaimer of property that, as a result of the disclaimer, was transferred to such Special Fund.
- (c) Notwithstanding anything herein to the contrary, no member or Director who is a Disqualified Person with respect to a particular Special Fund may participate in any vote relating to the appointment, removal, or compensation of any member of the Special Fund Committee of the Special Fund.

Section 2. Special Committees. The Board may from time to time appoint temporary or any other special committees which in its discretion may be deemed necessary and advisable.

You have requested the following rulings with regard to Daughter's disclaimer of \$a of Decedent's residuary estate:

1. The disclaimer by Daughter constitutes a qualified disclaimer within the meaning of § 2518.
2. Assuming that the disclaimer is a qualified disclaimer under § 2518 and that Foundation is a qualified charity under § 501(c)(3) to which bequests are deductible under § 2055, the amount passing to

Foundation by reason of Daughter's disclaimer will be treated as passing from Decedent to Foundation for purposes of § 2055(a) and thus will qualify as a federal estate tax charitable deduction for Estate under § 2055.

RULING 1

Section 2046 provides that for estate tax purposes, 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 federal estate, gift, and generation-skipping transfer tax provisions will apply to that interest as if it had never been transferred to such person.

Under § 2518(b), the term "qualified disclaimer" means an irrevocable and unqualified refusal by a person to accept an interest in property, provided: (1) such refusal is in writing; (2) the disclaimer 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 the date which is nine months after the later of (A) the date on which the transfer creating the interest in such person is made, or (B) the day on which such person attains age twenty-one; (3) the person disclaiming the interest has not accepted the interest or any of its benefits; and (4) as a result of such refusal, the interest passes without any direction on the part of the person making the disclaimer and passes either (A) to the spouse of the decedent, or (B) to a person other than the person making the disclaimer.

Section 2518(c)(1) provides that a disclaimer with respect to an undivided portion of an interest which meets the requirements of § 2518(b) shall be treated as a qualified disclaimer of such portion of the interest.

Under § 25.2518-1(b) of the Gift Tax Regulations, if a qualified disclaimer is made, the property is treated, for federal gift, estate, and generation-skipping transfer tax purposes, as passing directly from the transferor, and not from the disclaimant, to the person entitled to receive the property as a result of the disclaimer. Thus, the disclaimant is not treated as making a gift.

Section 25.2518-2(d)(2) provides, in pertinent part, that if a beneficiary who disclaims an interest in property is also a fiduciary, the disclaimant cannot retain a wholly discretionary power to direct the enjoyment of the disclaimed interest. For example, a fiduciary's disclaimer of a beneficial interest does not meet the requirements of a qualified disclaimer if the fiduciary exercised or retains a discretionary power to allocate enjoyment of that interest among members of a designated class.

Under § 25.2518-2(e), in general, a disclaimer is not a qualified disclaimer unless the disclaimed interest passes without any direction on the part of the disclaimant to a person other than the disclaimant. The disclaimer will not be qualified 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 or transfer of the property or interest in property to another person) unless such power is limited by an ascertainable standard.

Section 25.2518-3(b) provides that the disclaimer of an undivided portion of a separate interest in property which 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. See § 25.2518-3(d), Example 20, regarding the disclaimer of a fractional share of a residuary bequest.

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.

In the present case, Daughter has disclaimed \$a of the residuary bequest under Decedent's will. Any property that is disclaimed by Daughter will pass to Foundation pursuant to the terms of Item VI of Decedent's will. Pursuant to the terms of the proposed amendments to Foundation's charter of incorporation and bylaws, the disclaimed property will be held in a segregated Special Fund, separate and apart from the other Foundation assets. The power to make distributions of income and/or principal from the Special Fund and to select the recipients of such distributions will be held exclusively by the Special Fund Committee. Daughter is precluded from serving on the Special Fund Committee established for administering the property disclaimed by Daughter. Daughter will have no power to appoint or remove any member of that Special Fund Committee.

Therefore, we conclude that the disclaimer executed by Daughter on Date 3 constitutes a qualified disclaimer under § 2518, provided the charter of incorporation and bylaws of Foundation are amended as proposed, and the terms of Foundation's charter of incorporation and bylaws, as amended, are effective under state law.

RULING 2

Under § 2055(a)(2), for estate tax purposes, 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 the use of any corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes. A corporation that qualifies under § 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 states that in the case of a bequest, devise, or transfer made by a decedent 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.

It is represented that Foundation is a federally tax-exempt organization described in § 501(c)(3). Under the terms of Decedent's last will and testament, any amount disclaimed by Daughter will pass to Foundation. Accordingly, based on the representations noted above, the property passing to Foundation as a result of Daughter's disclaimer will qualify for an estate tax charitable deduction under § 2055, provided that Daughter's disclaimer is a qualified disclaimer under § 2518, the charter of incorporation and bylaws of Foundation are amended as proposed, and the terms of Foundation's charter of incorporation and bylaws, as amended, are effective under state law.

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) 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.

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,

Melissa C. Liquerman
Branch Chief, Branch 9
(Passthroughs & Special Industries)

Enclosures

Copy for 6110 purposes