

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:4 – PLR-126260-04

Date: DECEMBER 17, 2004

Re:

Legend:

Grantor

Trust

Daughter

Grandchild A

Grandchild B

Grandchild C

Grandchild D

Grandchild E

Grandchild F

Grandchild G

Trustee

Plan for Foundation

Foundation

Agreement

Fund

Date 1

Date 2

Date 3

State

Cite

Dear :

This is in response to your letter, dated December 14, 2004, and prior correspondence, in which you request several rulings concerning the estate tax

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treatment of property to be disclaimed pursuant to section 2518 of the Internal Revenue Code.

According to the facts submitted, Grantor died on Date 3, a resident of State. Grantor amended and restated her inter vivos revocable trust (Trust) on Date 1. Trust was last amended on Date 2. Also on Date 2, Grantor, by agreement (Agreement) with Trustee (a bank) and Foundation, created Fund to be administered by Trustee and Foundation. The Agreement provides that the Trustee is to administer the Fund in accordance with the terms of the Agreement and the provisions of the Plan for Foundation. The Agreement recites that the Plan for Foundation authorizes the Foundation's Board of Directors to modify any restriction or condition of the Agreement under certain conditions. In addition, the Agreement provides that the Foundation shall have ultimate authority and control over distributions from the Fund. The Agreement further provides that the Fund is to be administered as an advised fund. Each advisor is to serve in an advisory capacity only in accordance with the policies established by the Foundation for donor advised funds. The advisors may make nonbinding recommendations to the Foundation concerning the proposed disposition from Fund. Under the Agreement, the Trustee is required to distribute as much of the Fund's net income or principal or both at such times, in such amounts and for such charitable purposes as directed by the Foundation.

It is represented that Foundation is an organization described in section 2055 (a)(1)-(4) and is exempt from taxation under section 501(c)(3). Foundation manages a large number of donor advised funds and under established procedures, after receiving a distribution recommendation, a member of the staff of the Foundation will assemble the relevant information regarding the proposed distribution. That information is then referred to a committee of the staff (not including the staff member that assembled the background information) consisting of three Foundation staff members. That committee makes a report as to whether the proposed distribution is consistent with the specific charitable needs most deserving of support by the Foundation. A favorable report is then referred to the Board of Directors of the Foundation. The Board then acts upon the committee's report and allocates funds in accordance with its regular grant-making procedures.

Under Paragraph 5.1 of Trust, Grantor bequeathed her tangible personal property, in equal shares to her surviving grandchildren. Paragraph 5.1 further provides that if a beneficiary of a gift under paragraph 5.1 disclaims any portion of a gift under Paragraph 5.1, the portion disclaimed is to be distributed to Trustee, as Trustee of a sub-fund named for such disclaimant as a Donor Advised Fund under Agreement establishing Fund. During his or her lifetime, the disclaimant is to serve as the advisor to the sub-fund.

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Paragraph 6.2 disposes of the balance of the Trust property after the satisfaction of various other bequests. Under Paragraph 6.2 the remaining balance of the Trust property is to be distributed 75% to Daughter's surviving issue, by representation, and 25% to Grandchild A, or if Grandchild A does not survive Grantor, then to Grandchild A's issue, by representation.

It is proposed that Grandchildren A, B, C, D, E, F, and G will execute written disclaimers of their respective interests in the property passing under Paragraph 5.1 of Trust, as follows. Grandchildren B, C, and G will renounce and disclaim any and all rights or interests in "[a]ll items of wearing apparel, household goods, and furnishings, and any other tangible personal property, held by . . . [Trust] . . . excepting only such items as have heretofore been distributed to [the disclaimant] . . . by the trustee." Grandchildren A, D, E, and F will disclaim a specific percentage of their interest in the Paragraph 5.1 property. The disclaimers will be timely delivered. It is also represented that the disclaimants are not employees of either Trustee or Foundation, nor is there current intent to be employed by either organization.

The following rulings are requested:

1. An irrevocable and unqualified refusal by a beneficiary under Paragraph 5.1 of Trust, to accept his or her bequest under said paragraph following the death of Grantor, will constitute a qualified disclaimer of property, to the extent of the disclaimer, under Section 2518(b) of the Internal Revenue Code.

2. The estate of Grantor will be entitled to an estate tax charitable deduction for any property disclaimed by a beneficiary under Paragraph 5.1 of Trust, which passes to Trustee pursuant to the terms of the Trust.

Section 2046 provides that, for estate tax purposes, disclaimers of property interests passing upon death are treated as provided in 2518.

Section 2518 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 disclaimer is received by the transferor of the interest or his legal representative no later than 9 months after the date on which the transfer creating the

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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 received 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)(1) of the Gift Tax Regulations provides that the acceptance of any consideration in return for making the disclaimer is an acceptance of the benefits of the entire interest disclaimed.

Section 25.2518-2(d)(2) provides 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 for 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.

Under Section 25.2518-3(a)(1)(i), the disclaimer of all or an undivided portion of any separate interest in property may be a qualified disclaimer even if the disclaimant has another interest in the same property. Under section 25.2518-3(b), a disclaimer of an undivided portion of a separate interest in property which meets the other requirements of a qualified disclaimer under section 2518(b) 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.

In Rev. Rul. 72-552, 1972-2 C.B. 525, the president and director of a corporation organized under section 501(a) as well as other directors of the corporation had the power to direct the disposition of the corporation's funds for charitable purposes. The ruling holds that, due to the president's right in conjunction with others to designate the entities who shall possess or enjoy the properties transferred to the corporation, the

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property transferred by the president to the corporation was included in the president's gross estate at his death under section 2036.

Section 2055(a) provides that 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 a corporation or certain other organizations organized and operated for religious, charitable, scientific, literary, or educational purposes. A foundation organized under section 501(c)(3) is one that is organized and operated exclusively for these purposes.

Section 20.2055-2(c)(1)(i) provides that the amount of a bequest for which a federal estate tax charitable deduction is allowed includes the amount of a bequest, devise, or transfer which passes to charity as a result of a qualified disclaimer under section 2518.

Under State law, Cite, a beneficiary of an inter vivos trust may disclaim an interest in whole or in part, or with reference to specific parts, shares, portions, or assets by filing a disclaimer in district court within nine months of the creation of the interest or, if the disclaimant is not then finally ascertained as a beneficiary or the disclaimant's interest has not then become indefeasibly fixed both in quality and in quantity, the disclaimer must be filed not later than nine months after the event that would cause the disclaimant to become finally ascertained and the interest to become indefeasibly fixed in quality and quantity. A copy of the disclaimer must be delivered or mailed to the trustee of a trust in which the interest disclaimed exists or to any other person who has legal title to, or possession of, the property in which the interest disclaimed exists. Unless otherwise provided in the instrument creating the interest with reference to the possibility of a disclaimer, the interest disclaimed is to be distributed or otherwise disposed of in the same manner as if the disclaimant had died immediately preceding the death or other event that causes the disclaimant to become finally ascertained as a beneficiary and the interest to become indefeasibly fixed both in quality and quantity.

In the present case, each disclaimant proposes to disclaim either his or her entire interest in the Paragraph 5.1 property or an undivided portion of his or her respective interest in the property. Under Paragraph 5.1, Trust property disclaimed by a beneficiary that passes under Paragraph 5.1 is to be distributed to a donor advised sub-fund held by Trust to be administered by Foundation. Each disclaimant may only make advisory recommendations to Foundation with respect to proposed distributions of property. Such recommendations may be accepted or rejected by the Foundation. The final decision regarding distribution of the funds is made by Foundation pursuant to clearly defined procedures that require an independent determination that the proposal is consistent with the charitable goals of Foundation. Accordingly, any property that is disclaimed under Paragraph 5.1 that passes to the donor advised sub-fund will be

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considered to pass, without any direction on the part of the person making the disclaimer, within the meaning of section 2518(b)(4).

Accordingly, assuming the other requirements of section 2518 are satisfied the proposed disclaimers by Grandchild A, B, C, D, E, F, and G will constitute qualified disclaimers under section 2518.

It is represented that Foundation is an organization described in section 2055(a)(1) – (4), and is exempt from tax under section 501(c)(3). Accordingly, the Grantor's estate will be entitled to an estate tax charitable deduction under section 2055(a) for the fair market value of the property passing to the donor advised sub-funds of Foundation, as a result of the disclaimers by Grandchild A, B, C, D, E, F, and G. See section 20.2055-2(c)(1)(i).

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 the 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 law, a request for reconsideration of this ruling should be submitted to this office.

Except as specifically set forth above, we express no opinion concerning the federal tax consequences of the foregoing transactions under any other provisions of the Code or regulations.

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.

Sincerely,

George Masnik
Branch Chief, Branch 4,
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes