

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:04

PLR-151587-05

Date: DECEMBER 22, 2005

Legend:

Decedent =

Taxpayer =

Foundation =

Date 1 =

Trust Company =

Will =

State =

State Code =

\$X =

Dear :

This letter is in response to a letter dated October 6, 2005 from your authorized representative requesting a ruling concerning the federal tax consequences of a proposed disclaimer.

The facts and representations submitted are summarized as follows:

Decedent, a resident of State, died testate on Date 1. Decedent was survived by one child, Taxpayer, who is Decedent's only living descendant. In accordance with Article VI of Will, Trust Company and Taxpayer were appointed as co-Executors of Will and Co-Trustees of any trusts created under Will.

Pursuant to Article IV of Will, Decedent's residuary estate passes to Decedent's descendants who survive him, per stirpes, subject to the provisions of Article V of Will. If none of Decedent's descendants survive Decedent, the residuary estate passes to Foundation. Foundation is an organization described in § 501(c)(3) of the Internal Revenue Code and a private foundation within the meaning of § 509(a). Taxpayer is Director and President of Foundation.

Article V of Will provides, generally, that the Trustees are to hold and administer any property given to Taxpayer or to any other descendants subject to Article V in separate trusts (Trust) for the benefit of Taxpayer and such other descendants. The trustee is directed to distribute to the beneficiary of such trust or any descendant of such beneficiary such amounts of trust income and principal as shall be necessary to provide for the health, support, maintenance and education of the distributee. In general, the separate trust is to last for the lifetime of the beneficiary. On the beneficiary's death, the trust corpus is to be distributed pursuant to the beneficiary's exercise of a special testamentary power of appointment.

As noted Taxpayer is Decedent's only living descendant. Taxpayer proposes to disclaim all of his interest in the Article V trust (Trust) with respect to a pecuniary amount of the residuary estate passing to Trust. The disclaimer provides:

Pursuant to Section [of State Code] and Sections 2046 and 2518 of the Internal Revenue Code, I hereby irrevocably and without qualification disclaim and renounce all of my Beneficial Interest in the Trust with respect to or in any way attributable to [\$X] of the Residuary Estate otherwise passing to the Trust. The [\$X] of the Residuary Estate otherwise passing to the Trust but with respect to which I am disclaiming all of my Beneficial Interest is hereinafter referred to as the "*Pecuniary Amount*" and all of my Beneficial Interest in the Trust with respect to or in any way attributable to the Pecuniary Amount is hereinafter referred to as the "*Disclaimed Interest*". ... I hereby declare I have not accepted any interest in or any of the benefits of the Pecuniary Amount or the Disclaimed Interest.

Prior to the time that Taxpayer executes the proposed disclaimer, Directors of Foundation propose to amend the bylaws of Foundation. Pursuant to Article 1, Section 4, 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 and such disclaimed property will not be commingled with any other property of Foundation. In addition, at all times during the lifetime of Taxpayer while the Foundation has any interest in the disclaimed property, the Foundation will be required to have two separate classes of Directors, the General Directors and the Special Directors. Only the Special Directors will have the power to make decisions related to the distribution of the disclaimed property. A majority of the then serving General Directors, other than

Taxpayer, will be authorized to appoint Special Directors and remove Special Directors. Taxpayer can not participate in any vote to appoint or remove Special Directors. There must at all times be at least three Special Directors and Taxpayer may not serve as a Special Director.

The executors of Decedent's estate request the following rulings:

1. The proposed disclaimer by Taxpayer will constitute a qualified disclaimer under § 2518.
2. Assuming that the disclaimer is a qualified disclaimer for purposes of § 2518, the property passing to Foundation as a result of the disclaimer will be eligible for the estate tax charitable deduction under § 2055.

ISSUE 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 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)(2) of the Gift Tax Regulations 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 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 section 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(c) provides that a disclaimer of a specific pecuniary amount out of a pecuniary or nonpecuniary bequest or gift that satisfies the other requirements of a qualified disclaimer under section 2518(b) and the corresponding regulations is a qualified disclaimer provided that no income or other benefit of the disclaimed amount inures to the benefit of the disclaimant either prior to or subsequent to the disclaimer. Thus, following the disclaimer of a specific pecuniary amount from a bequest or gift, the amount disclaimed and any income attributable to such amount must be segregated from the portion of the gift or bequest that was not disclaimed. Such a segregation of assets making up the disclaimer of a pecuniary amount must be made on the basis of the fair market value of the assets on the date of the disclaimer or on a basis that is fairly representative of value changes that may have occurred between the date of the transfer and the date of the disclaimer.

In Rev. Rul. 72-552, 1972-2 C.B. 525, the decedent, who was the president and a director of a corporation organized under section 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 section 2036.

Under State Code, any person, without prior court approval, who may be entitled to receive any property as a beneficiary, may disclaim the property interest. A disclaimer is effective as of the death of decedent and relates back for all purposes to the death of the decedent. Unless the decedent's will provides otherwise, the property subject to the disclaimer passes as if the person disclaiming had predeceased the decedent and a future interest that would otherwise take effect in possession or enjoyment after the termination of the interest that is disclaimed takes effect as if the disclaiming beneficiary had predeceased the decedent.

In the present case, Taxpayer proposes to disclaim a pecuniary amount of the value of property passing to Trust. It is represented that Taxpayer has not and will not have accepted any of the benefits from the disclaimed amount prior to executing the disclaimer. It is also represented that after the disclaimer the amount disclaimed and any income attributable to that amount will be segregated from the portion of the property that was not disclaimed as required under § 25.2518-3(c). Under State Code, Taxpayer is treated as predeceasing the Decedent with respect to the disclaimed property. Accordingly, pursuant to Will, the disclaimed property will pass to Foundation. Pursuant to the terms of the proposed amendments to Foundation's bylaws, the disclaimed property will be held in a segregated 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 Special Directors. Taxpayer is precluded from serving as a Special Director. Further, Taxpayer is precluded from participating in any decision to appoint or remove any Special Director.

Based on the facts presented and representations made, and assuming the disclaimer is executed and delivered to the appropriate parties within 9 months of the date of Decedent's death, we conclude that Taxpayer's disclaimer of a pecuniary amount of \$X, will be a qualified disclaimer.

ISSUE 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 organized under section 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 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 section 2055 includes an interest which falls into the bequest, devise, or transfer as the result of a qualified disclaimer under section 2518.

In this case, it is represented that Foundation is a federally tax-exempt organization described in section 501(c)(3). As noted above, under State Code, Taxpayer is treated as predeceasing the Decedent with respect to the disclaimed property. Consequently, pursuant to Will, the disclaimed property will pass to Foundation. Accordingly, based on the representations noted above, the property passing to Foundation as a result of Taxpayer's disclaimer will qualify for an estate tax charitable deduction under section 2055, provided that Taxpayer's disclaimer is a qualified disclaimer under section 2518, the bylaws of Foundation are amended as proposed, and the terms of Foundation's 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.

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.

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

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 L. Masnik
Chief, Branch 4
(Passthroughs & Special Industries)

Enclosure

Copy for section 6110 purposes

cc: