

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:
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Date:
April 27, 1999

Legend

- Decedent =
- Spouse =
- Child 1 =
- Daughter-in-law =
- Child 2 =
- Child 3 =
- Charitable Foundation =
- State =
- Artist =
- Individual 1 =
- Individual 2 =
- Individual 3 =
- Individual 4 =
- State Statute =

This is in response to your letter of March 16, 1999, in which you requested rulings under §§ 2055 and 2518 of the Internal Revenue Code.

Decedent died on July 30, 1998, survived by her children, Child 1 and Child 2. Decedent's spouse (Spouse) predeceased her. Another child, Child 3, also predeceased Decedent.

Item THIRD of Decedent's will, as amended, states as follows:

THIRD: I give and bequeath unto my husband [Spouse], all of my jewelry, wardrobe, automobiles, household furniture, household effects, ornaments, silverware, and like objects and articles (including works of art, should I own any at the time of my death); should my husband not survive me, I give and bequeath such objects and articles unto my children me surviving, intending to exclude issue of any child of mine who may predecease me.

Item TENTH of Decedent's will provides that the residue of Decedent's estate, including any lapsed legacies, is to be paid over to Charitable Foundation.

Item FIFTEENTH of Decedent's will provides that all estate, transfer, legacy, succession and inheritance taxes, whether federal, state, or local, by whatever name known, imposed upon Decedent's estate and upon or by reason of any gift, insurance, bequest, devise or other benefit, or upon or by reason of any property or asset, whether the same shall constitute part of Decedent's estate or otherwise, shall be paid out of and borne in their entirety by the residuary estate, without apportionment.

Included among the assets in Decedent's estate are thirteen paintings by Artist. Child 1 and Child 2 propose to disclaim their interest in these paintings. The proposed disclaimer submitted with the ruling request lists each of the paintings by name. Child 1 and Child 2 are executors of Decedent's estate.

Child 1 and Child 2 represent that the paintings have not been distributed by the estate and that they have not accepted the paintings or any benefit with respect to the paintings within the meaning of § 25.2518-2(d) of the Gift Tax Regulations. From the time of Decedent's death until recently, the paintings have remained in Decedent's apartment. In order to prepare for the closing of the sale of Decedent's apartment, the paintings are now being held in storage.

Charitable Foundation is a corporation that was organized under the laws of State in 1952. The executors of Decedent's estate have represented that Charitable Foundation is an organization described in §§ 170(c) and 2055(a). At Decedent's death, the members, directors, and officers of Charitable Foundation were Decedent, Child 1, Child 2, and Daughter-in-law.

The following steps have been taken to insure that neither Child 1 nor Child 2, as members, directors or officers of the Charitable Foundation, will have any power to dispose of or otherwise deal with the paintings received by Charitable Foundation as a

result of the proposed disclaimers, or the proceeds of any sale. The existing directors have appointed four additional persons, Individual 1, Individual 2, Individual 3, and Individual 4, as members. Child 1 and Child 2 have irrevocably waived and renounced the right at all times while Charitable Foundation holds the paintings to: (1) participate in the election and/or removal of members and directors of Charitable Foundation; (2) participate in the appointment of directors to any committee formed to administer and dispose of the paintings (or the proceeds from the sale thereof); and (3) participate in the exercise of any control, direct or indirect, as a member, director, officer, or in any other capacity, in the administration or disposition of, the paintings (or the proceeds from the sale thereof).

The members, with Child 1 and Child 2 abstaining, elected Individual 1 and Individual 4 to the board of directors. The members, with Child 1 and Child 2 abstaining, amended the by-laws of Charitable Foundation to authorize the creation of committees of directors. The directors, with Child 1 and Child 2 abstaining, established a committee composed of three directors to administer and dispose of any and all assets, including the paintings, received by Charitable Foundation as a result of the disclaimer by Child 1 and Child 2.

Under State Statute, a disclaimed interest passes as if the disclaimant pre-deceased the testator. Further, it is represented that the estate contains sufficient assets to fund any pre-residuary bequests, such that the disclaimed painting will pass pursuant to applicable state law and the terms of the will, as part of the estate residue under Item TENTH of the will.

The executors have requested the following rulings:

1. The disclaimers by Child 1 and Child 2 will be qualified disclaimers within the meaning of § 2518.
2. An estate tax charitable deduction will be allowed under § 2055(a) for the value of the residuary estate, including the value of the disclaimed paintings, passing to Charitable Foundation under Item TENTH of the will.

Law and Analysis

Issue 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, then for purposes of the estate, gift, and generation-skipping transfer tax the disclaimed interest is treated as if it never passed to that person.

Section 2518(b) defines a qualified disclaimer as an irrevocable and unqualified refusal by a person to accept an interest in property but only if--

- (1) the refusal 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 the date that is 9 months after the later of--
 - (A) the date on which the transfer creating the interest in the person is made, or
 - (B) the day on which the person attains age 21,
- (3) the person 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 25.2518-1(b) of the Gift Tax Regulations provides that, if a person makes a qualified disclaimer, for purposes of the federal estate, gift, and generation-skipping transfer tax provisions, the disclaimed interest in property is treated as if it had never been transferred to the disclaimant. Instead, it is considered as passing directly from the transferor of the property to the person entitled to receive the property as a result of the disclaimer. Accordingly, a disclaimant is not treated as making a gift.

Section 25.2518-2(d)(1) provides that a qualified disclaimer cannot be made with respect to an interest in property if the disclaimant has accepted the interest or any of its benefits, expressly or impliedly, prior to making the disclaimer. Acceptance is manifested by an affirmative act that is consistent with ownership of the interest in property.

Section 25.2518-2(d)(2) provides that if a beneficiary who disclaims an interest in property is also a fiduciary, actions taken by the person in the exercise of fiduciary powers to preserve or maintain the disclaimed property are not treated as an

acceptance of the property or its benefits. Thus, an executor who is also a beneficiary may direct the harvesting of a crop or the general maintenance of a home. However, a fiduciary 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.

Section 25.2518-2(e)(1) provides that 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.

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(a) 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, due to the decedent's right, exercisable 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 this case, Decedent's will provides that the paintings are to pass to her surviving children, outright. Child 1 and Child 2 propose to disclaim their interest in the paintings and, under applicable state law and Decedent's will, the paintings will pass as part of the residuary estate of which Charitable Foundation is the beneficiary. Child 1 and Child 2 have not accepted the paintings to be disclaimed nor have they accepted any of the benefits with respect to the paintings. Further, although Child 1 and Child 2 are members, directors and officers of the Charitable Foundation, they will not participate in any decisions relating to the paintings, the sale of the paintings or the use of the proceeds from the sale of the paintings. Thus, they will not have any discretionary power to direct the enjoyment of the disclaimed property.

Accordingly, we conclude that, if the respective disclaimers are received by the Decedent's legal representative, or the holder of the legal title to the property to which the interest relates, not later than the date that is 9 months after the Decedent's death, the disclaimers will be qualified disclaimers under § 2518.

Issue 2

Section 2055(a) provides that, for purposes of the Federal estate tax, the value of the taxable estate shall be determined by deducting from the value of the gross estate all bequests to or for the use of certain governmental entities, certain corporations

organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, and certain other fraternal and veterans organizations.

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 § 2055 includes an interest that falls into the bequest, devise, or transfer as a result of a qualified disclaimer.

It is represented that the Charitable Foundation is an organization described in §§ 170(c) and 2055. Assuming that the disclaimers executed by Child 1 and Child 2 are qualified disclaimers, then under §§ 2046 and 2518, the paintings will be treated as passing from Decedent, as part of the estate residue under Item TENTH, of which Charitable Foundation is the beneficiary. Decedent's estate will be allowed an estate tax charitable deduction for the value of the residuary estate (including the value of the disclaimed paintings) passing to Charitable Foundation.

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(j)(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 the taxpayer.

Sincerely yours,

Assistant Chief Counsel
(Passthroughs and Special
Industries)

By _____
George Masnik
Chief, Branch 4

Enclosure (1)
Copy for § 6110 purposes