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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B04-PLR-112782-02

Date:

MAY 01, 2002

Re:

Legend:

Decedent =
Spouse =
Foundation =
Date 1 =
Date 2 =
County Court =

Dear :

This is in response to your February 28, 2002 letter and other correspondence requesting rulings concerning the estate tax consequences of the proposed disclaimer and the proposed reformation of a trust.

You have requested the following rulings:

1. Spouse's proposed disclaimer of her right to receive principal distributions from the trust will constitute a qualified disclaimer under section 2518 of the Internal Revenue Code.
2. The proposed reformation of the trust will be a qualified reformation under section 2055(e)(3).
3. An estate tax charitable deduction under section 2055(a) will be allowed for the present value of the remainder interest in the reformed trust.
4. The present value of the Spouse's right to receive unitrust payments from the reformed trust will qualify for the estate tax marital deduction under section 2056(b)(8).

The facts submitted are as follows:

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Decedent executed a will on Date 1. Under section THIRD of the will, trustees are to hold the balance of Decedent's estate (after payment of expenses, debts, and certain bequests) in trust and pay to Decedent's surviving spouse (Spouse), or apply for her benefit, such part or all of the net income and/or principal as they deem reasonable for her support, care, and welfare. In exercising such discretion, the trustees are directed to consider her current standard of living and see that such standard is maintained or increased as Spouse shall desire during her lifetime. Section THIRD further states that the purpose of the trust is to provide for the support of Spouse, during her lifetime, and to be used for charitable purposes after her death.

Section FIFTH provides that upon the death of Spouse, the trust shall terminate and the remainder shall be distributed to a tax-exempt charitable foundation that Decedent intends to create.

Section SIXTH provides that if Decedent fails to form a charitable foundation prior to his death, the remaining property held in the trust shall be transferred to Foundation, an organization described in section 501(c)(3), with the income to be used for its general charitable purposes.

Decedent died on Date 2. Decedent failed to form a charitable foundation prior to his death. Spouse was nearest age 74 on the date of Decedent's death.

Spouse proposes to disclaim irrevocably, in writing, and within nine months of Date 2 all of her interest as a discretionary distributee of the trust corpus during her lifetime. The disclaimer will not extend to any other distribution to which Spouse may become entitled as a result of the reformation of the trust. After Spouse disclaims her interest in trust corpus, but within 90 days of the due date for filing the U.S. Estate (and Generation-Skipping Transfer) Tax Return (Form 706), including extensions, the trustees propose to petition the County Court to reform the trust pursuant to section 2055(e)(3) in order to comply with the requirements for a charitable remainder unitrust under section 664(d)(2) as of Date 2. Following reformation, the trust will provide for a unitrust amount equal to 6.625% of the net fair market value of the trust assets valued annually, at the beginning of each taxable year of the trust to be paid quarterly at the end of each quarter to Spouse for her life. On Spouse's death, the trust corpus will be paid to Foundation.

LAW AND ANALYSIS

Ruling 1

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

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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 25.2518-3(a)(1) of the Gift Tax Regulations provides that, if the requirements of section 2518(b) are satisfied, 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. In general, each interest in property that is separately created by the transferor is treated as a separate interest in the same property. For example, if an income interest in securities is bequeathed to A for life, then to B for life, with the remainder interest in the securities bequeathed to A's estate, and if the remaining requirements of section 2518(b) are satisfied, A can make a qualified disclaimer of either the income interest or the remainder.

Section 25.2518-3(d), Example 9, considers a situation where H is the income beneficiary of a trust, and also possesses the right, as trustee, to invade corpus for H's health, maintenance, support, and happiness. In addition, H possesses a testamentary power to appoint trust corpus. The example concludes that if H disclaims both the power to invade corpus for H's benefit and the testamentary power to appoint corpus, while retaining the income interest, H's disclaimer will be a qualified disclaimer.

Section 25.2518-3(d), Example 11, describes a situation where W is to receive all of the trust income for life. The trustee has the power to invade the trust corpus for the support or maintenance of D during the life of W. The trust is to terminate at W's death, at which time the trust property is to be distributed to D. D makes a timely disclaimer of the right to corpus during W's life, but does not disclaim the remainder interest. The example concludes that D's disclaimer is a qualified disclaimer, assuming the remaining requirements of section 2518 are met.

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In this case, Spouse proposes to disclaim her right to receive distributions from the trust corpus pursuant to section THIRD of Decedent's will. Spouse's interest in the corpus of the trust is a separate interest in the trust for purposes of section 2518. Accordingly, assuming the other requirements of section 2518 are satisfied, we conclude that the proposed disclaimer will be a qualified disclaimer under section 2518.

Rulings 2 - 3

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, and transfers to or for a corporation or certain other organizations organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes.

Section 2055(e)(2) provides that no deduction will be allowed for an interest passing to a charitable organization where an interest in the same property, other than an interest which is extinguished upon the decedent's death, passes to a noncharitable beneficiary unless: 1) in the case of a remainder interest, the interest is in a trust which is a charitable remainder annuity trust or a charitable remainder unitrust described in section 664, or a pooled income fund described in section 642(c)(5); or 2) in the case of any other interest, the interest is in the form of a guaranteed annuity or is a fixed percentage distributed yearly.

Section 2055(e)(3) provides that, if a trust must be reformed in order to qualify under section 2055(e)(2), the reformation will be a qualified reformation and the charitable interest will be deductible under section 2055(a) if the following requirements are satisfied:

1. The interest is one for which a deduction would be allowable under section 2055(a) at the time of the decedent's death but for the requirements in section 2055(e)(2);
2. The nonremainder interest both before and after the qualified reformation must terminate at the same time;
3. The reformation is effective as of the date of the decedent's death;
4. The difference between the actuarial value of the qualified interest determined as of the date of the decedent's death and the actuarial value of the reformable interest does not exceed 5 percent of the actuarial value of the reformable interest; and
5. If all noncharitable interests in the trust prior to reformation are not expressed in specified dollar amounts or a fixed percentage of the fair

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market value of the property, then a judicial proceeding is commenced no later than 90 days after the date the federal estate tax return (including extensions) is due, or if no federal estate tax return is required to be filed, the last date (including extensions) for filing the income tax return for the first taxable year for which such a return is required to be filed by the trust.

Section 20.2055-2(a) of the Estate Tax Regulations provides that if a trust is created for both charitable and private purposes, a deduction may be taken for the value of the charitable interest only insofar as that interest is presently ascertainable and, hence severable from the noncharitable interest.

In the instant case, as discussed above, Spouse's disclaimer of her interest in the corpus of the trust will be a qualified disclaimer under section 2518. Thus, for estate tax purposes, the disclaimed interest is treated as if it had never been transferred to Spouse. Instead it is considered as passing directly from Decedent to Foundation. Thus, for estate tax purposes, as of the date of Decedent's death, Spouse's right to receive trust income is deemed to be the only noncharitable interest in the trust. Therefore, we conclude that if the disclaimer is executed and the requirements of section 2518 are otherwise satisfied, the charitable interest in the trust prior to reformation would have qualified for an estate tax charitable deduction under section 2055(a), but for the provisions of section 2055(e)(2). In other words, the value of the remainder interest in the trust, determined based on the assumption that all the trust income is distributed to the income beneficiary, would qualify for a charitable deduction, but for the provisions of section 2055(e)(2). Accordingly, the first requirement for a qualified reformation under section 2055(e)(3) is satisfied.

The proposed reformation satisfies the second requirement for a qualified reformation under section 2055(e)(3) since Spouse's interest both before and after the proposed reformation will terminate at the same time (i.e., at Spouse's death). The proposed reformation will also satisfy the third requirement because the reformation will be effective as of the date of Decedent's death.

With respect to the fourth requirement, based on the interest rate under section 7520 for the month of Decedent's death of 6.2%, the factor for determining the actuarial value of the charitable remainder interest in the trust prior to reformation following the death of an individual aged 74 is 0.54139. The factor for determining the actuarial value of the charitable remainder interest in Trust as reformed is 0.5145. Thus, the difference between the actuarial value of the reformable interest in Trust and the qualified interest after reformation will be less than 5 percent of the actuarial value of the reformable interest. Accordingly, the proposed reformation satisfies the fourth requirement under section 2055(e)(3).

The proposed reformation will satisfy the fifth requirement under section 2055(e)(3) since, even though Spouse's interest in the reformable trust is not expressed in a specified dollar amount or a fixed percentage of the fair market value of the trust, it

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is represented that a judicial proceeding to reform the trust is to be commenced within 90 days of the date that the Decedent's Federal estate tax return is due.

Accordingly, we conclude that the proposed reformation will be a qualified reformation for purposes of section 2055(e)(3) provided that the reformation is effective under local law, is commenced timely, and the trust as reformed satisfies the requirements of a charitable remainder unitrust as described under section 664(d)(2). Furthermore, if the trust as reformed meets the requirements of a charitable remainder unitrust as described under section 664(d)(2), the present value of the remainder interest in the trust, determined in accordance with section 20.2055-2(f)(2)(ii), will be allowed as an estate tax charitable deduction under section 2055(a).

Ruling 4

Section 2056(a) allows an estate tax deduction for the value of any interest in property that passes or has passed from a decedent to a surviving spouse, to the extent that the interest is included in the decedent's gross estate.

Section 2056(b)(1) provides that a deduction is not allowed under section 2056(a) where, on the lapse of time, on the occurrence of an event or contingency, or on the failure of an event or contingency to occur, the interest passing to the surviving spouse will terminate or fail, and (a) an interest in the property passes from the decedent to any person other than the surviving spouse (or the estate of such spouse), and (b) by reason of such passing the person (or his heirs or assigns) may possess or enjoy any part of the property after the termination or failure of the interest passing to the surviving spouse.

Section 2056(b)(8) provides generally that if the surviving spouse of the decedent is the only noncharitable beneficiary of a qualified charitable remainder trust (i.e., a trust described in section 664), section 2056(b)(1) will not apply to any interest in the trust which passes or has passed from the decedent to the surviving spouse. Section 20.2056(b)-8(a)(1) provides that if the surviving spouse is the only noncharitable beneficiary of a charitable remainder unitrust described in section 664, the value of the unitrust interest passing to the spouse qualifies for the marital deduction under section 2056(b)(8) and the value of the remainder interest qualifies for a charitable deduction under section 2055.

In this case, Spouse will be the only noncharitable beneficiary of the reformed trust. Accordingly, provided the reformed trust satisfies the requirements of section 664(d)(2), the value of the unitrust interest in the reformed trust passing to Spouse will qualify for the federal estate tax marital deduction under section 2056(b)(8).

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

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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.

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

Sincerely yours,

Lorraine E. Gardner
Assistant to Branch Chief, Branch 4
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure:

Copy of letter for section 6110 purposes