

Internal Revenue Service

Department of the Treasury

Number: **200052006**
Release Date: 12/29/2000
Index Number: 2518.01-00, 2055.12-05

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:4-PLR-110911-00

Date:

September 25, 2000

In Re:

Legend:

Decedent -
Sister -
Trust -
Foundation -
IRA#1 -
IRA#2 -
IRA#3 -

Date 1 -
Date 2 -
Date 3 -

Dear _____ :

This is in reference to your letter dated September 14, 2000, and prior correspondence requesting rulings regarding whether proposed disclaimers will constitute qualified disclaimers under § 2518 of the Internal Revenue Code, and whether the corpus of Trust passing to Foundation as a result of the disclaimers will qualify for an estate tax charitable deduction under § 2055.

PLR110911-00

The facts submitted are as follows:

On Date 1, Decedent created Trust, an unfunded inter vivos trust. Decedent's sister (Sister) was named to serve as trustee. Trust was to be funded at Decedent's death with assets passing pursuant to the residuary clause in Decedent's will, and, in the event Sister predeceased Decedent, by certain nonprobate assets passing to Trust on Decedent's death. The terms of Trust provide that, commencing at Decedent's death, Sister will receive a unitrust amount each year, paid in monthly installments, equal to five percent of the net fair market value of the assets of Trust determined as of the first day of the taxable year. The unitrust amount will be paid to Sister during her life. The Trust states that it is intended to qualify as a charitable remainder unitrust within the meaning of § 664(d)(2) of the Internal Revenue Code when funded. However, Article II(D)(3) of the Trust provides that its assets are "subject to a power granted to [Sister], in the [Decedent's] Last Will and Testament." Article II(D)(3) also gives the trustee the power to amend the Trust terms during Sister's life for the sole purpose of complying with the requirements for a qualified charitable remainder unitrust. Upon Sister's death, the trust principal will be distributed to one or more charitable organizations selected by the trustee that are described in §§ 170(c)(2), 2055(a), and 2522(a).

Decedent, a resident of Pennsylvania, died testate on Date 2, survived by Sister and one other sibling. Sister is designated as the executrix of Decedent's estate. In addition to real property and various investments, Decedent's gross estate includes three separate individual retirement accounts (IRA#1, IRA#2, and IRA#3) and six separate commercial annuity contracts (Annuity Contracts). Sister is the primary beneficiary of the three IRAs and the six Annuity Contracts. With respect to IRA#1, if Sister predeceases Decedent, the IRA is to pass to Trust. Neither IRA#2, IRA#3, nor the Annuity Contracts provide for alternative beneficiaries in the event Sister predeceases Decedent.

Under the terms of Decedent's will, certain specific bequests are made to charitable organizations that qualify under §§ 170(c)(2), 2055(a), and 2522(a). ITEM VIII of Decedent's will provides that these specific pecuniary bequests (none of which benefit Sister) may only be satisfied with the proceeds of IRA#2 and IRA#3 and, to the extent that the proceeds of IRA#2 and IRA#3 are insufficient to satisfy the bequests, those bequests will lapse. Decedent's will also provides a noncharitable specific bequest to a sibling and a pecuniary bequest to Sister. ITEM XII of Decedent's will acknowledges the establishment of Trust and grants Sister the "right and unlimited power to withdraw and

PLR110911-00

consume or demand and receive all or any part of the principal of the [Trust].” That provision specifically acknowledges that the power granted to Sister prevents Trust from qualifying for a federal gift and estate tax charitable deduction. However, ITEM XII provides that if Sister makes a qualified disclaimer of her right to withdraw and consume or demand and receive all or part of the principal, Sister will receive her unitrust interest in Trust in accordance with the terms of Trust. ITEM XII also provides that the rest, residue, and remainder of Decedent’s estate passes to Trust.

On Date 3, in accordance with Article II(D)(3) of Trust, the trustees obtained an order from the appropriate local court that amended Trust as follows:

1. Sister resigned as trustee of Trust, effective on Date 3 and a successor trustee was named, effective on Date 3.
2. Any reference to Sister’s power of withdrawal and invasion of Trust assets granted in Decedent’s will was removed from Trust.
3. Foundation, an organization described in § 501(c)(3) to which contributions are deductible under §§ 170(c) and 2055(a), was designated as the charitable beneficiary of Trust, with specific alternative charitable beneficiaries in the event that Foundation is not an organization described in § 501(c)(3) to which contributions are deductible under §§ 170(c) and 2055(a).
4. A provision was added that designated Sister’s duly appointed agent pursuant to a durable power of attorney among the parties who may receive unitrust distributions on the Sister’s behalf if she is not capable of managing her affairs.
5. Deferral provisions for payment of the unitrust amount after the date of Decedent’s death were clarified.

Sister proposes to make several irrevocable and unqualified disclaimers. Sister will disclaim any right and power to withdraw and consume or demand and receive all or any part of the principal of Trust granted to her under Decedent’s will and her right to receive the unitrust interest in Trust. In addition, Sister will disclaim and renounce any right, title or interest granted to her under the terms of IRA#1, IRA#2, IRA#3 and the six Annuity Contracts.

PLR110911-00

You represent that Sister has not accepted any unitrust interest payment from Trust and has not withdrawn, consumed, demanded, or received any interest in Trust principal. In addition, you represent that Sister has not received any interest in IRA#1, IRA#2, IRA#3 or in any of the six Annuity Contracts. Further, it is represented that Sister has no association with Foundation.

Ruling No. 1:

You have requested a ruling that the proposed disclaimers by Sister will be qualified disclaimers under § 2518 of the Internal Revenue Code.

Section 2046 provides that, in order to determine the effect of qualified disclaimers for estate tax purposes, the provisions under § 2518 relating to disclaimers are applicable.

Section 2518(a) provides that, if a person makes a qualified disclaimer with respect to any interest in property, the disclaimed interest will be treated for federal estate tax, gift tax, and generation-skipping transfer tax purposes, as if it had never been transferred to the disclaimant. Instead, the interest will be considered as passing directly from the decedent to the person entitled to receive the property as a result of the disclaimer. Section 2518(b) defines the term "qualified disclaimer" to mean an irrevocable and unqualified refusal by a person to accept an interest in property but only if:

- (1) such refusal is in writing;
- (2) such writing is received by the transferor of the interest, the transferor'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 nine months after the date on which the transfer creating the interest in such person is made;
- (3) such person has not accepted the interest or any of its benefits; and
- (4) as a result of the refusal, the interest passes without any direction on the part of the person making the disclaimer to either the spouse of the decedent or to a person other than the disclaimant.

PLR110911-00

Section 25.2518-2(d)(1) of the Gift Tax Regulations states 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 which is consistent with ownership of the interest in property. Under § 25.2518-2(d)(2), if a beneficiary who disclaims an interest in property is also a fiduciary, actions taken by such person in the exercise of fiduciary powers to preserve or maintain the disclaimed property is not treated as the acceptance of such property.

Section 25.2518-2(e)(3) states that if a disclaimer made by a person other than the surviving spouse is not effective to pass completely an interest in property to a person other than the disclaimant because (i) the disclaimant also has a right to receive such property as an heir at law, residuary beneficiary, or by any other means; and (ii) the disclaimant does not effectively disclaim these rights, the disclaimer is not a qualified disclaimer with respect to the portion of the disclaimed property which the disclaimant has a right to receive. If the portion of the disclaimed interest in property which the disclaimant has a right to receive is not severable property or an undivided portion of the property, then the disclaimer is not a qualified disclaimer with respect to any portion of the property. Thus, for example, if a disclaimant who is not a surviving spouse receives a specific bequest of a fee simple interest in property and as a result of the disclaimer of the entire interest, the property passes to a trust in which the disclaimant has a remainder interest, then the disclaimer will not be a qualified disclaimer unless the remainder interest in the property is also disclaimed.

Under applicable Pennsylvania law, any person who is entitled to receive property as a beneficiary may disclaim such property. 20 Pa. Cons. Stat. Ann. § 6201 (1999). In addition, Pennsylvania law provides that a disclaimer relates back for all purposes to the date of the death of the decedent and, unless the decedent's will provides otherwise, the property subject to the disclaimer passes as if the person disclaiming the property had predeceased the decedent. 20 Pa. Cons. Stat. Ann. § 6205 (1999).

As noted above, Sister proposes to disclaim her right and power to withdraw and consume or demand and receive all or any part of the principal of Trust granted to her under the terms of Decedent's will. Sister will also disclaim her right to receive the unitrust interest under Trust. We conclude that, assuming the other requirements of § 2518 are satisfied, the disclaimers will be qualified disclaimers as described in § 2518.

PLR110911-00

As stated above, Sister also proposes to disclaim any right, title or interest in IRA#1, IRA#2, and IRA#3 and the six Annuity Contracts. As a result of her disclaimer, in accordance with state law, IRA#1 will pass directly to Trust and IRA#2 and IRA#3 will pass to Decedent's estate. Also, as a result of Sister's disclaimer, the six Annuity Contracts will pass to Decedent's estate. Pursuant to Decedent's will, the six Annuity Contracts and the excess proceeds, if any, of IRA #2 and IRA#3 not used to fund the specific pecuniary bequests will pass to Trust. As stated above, Sister will also disclaim her entire interest in Trust (i.e., her right to principal invasions and the unitrust interest).

Consequently, as a result of the disclaimer of her interest as the primary beneficiary in IRA#1, IRA#2, IRA#3, and the six Annuity Contracts, and her disclaimer of her entire interest in Trust, Sister has relinquished her entire interest in those assets and, as required by § 2518(b)(4), the disclaimed interests will pass without any direction on the part of Sister to persons other than Sister. Accordingly, assuming the other requirements of § 2518 are satisfied, Sister's proposed disclaimer of IRA#1, IRA#2, IRA#3, and the six Annuity Contracts will be qualified disclaimers under § 2518.

Ruling No. 2:

You also request a ruling that, as a result of the qualified disclaimers by Sister, Decedent's estate will be allowed a charitable deduction under § 2055(a) for the value of IRA#1, the excess proceeds, if any, of IRA#2 and IRA#3, and the six Annuity Contracts, in addition to any other assets included in Decedent's gross estate, that will pass directly to the Foundation, as the charitable remainder beneficiary of Trust.

Section 2055(a) provides that, for purposes of the federal estate tax, the value of the taxable estate is determined by deducting from the gross estate the amount of all bequests, legacies, devises, or transfers for public, charitable and religious uses.

Section 20.2055-2(c)(1) of the Estate Tax Regulations provides, in part, that in the case of a bequest, devise or transfer made by a decedent 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 a result of a qualified disclaimer under § 2518.

PLR110911-00

As stated above, § 2518(a) provides that, if a person makes a qualified disclaimer with respect to any interest in property, the disclaimed interest will be treated for federal estate tax purposes, as if it had never been transferred to the disclaimant. Instead, the interest will be considered as passing directly from the decedent to the person entitled to receive the property as a result of the disclaimer. In addition, as noted above, under Pennsylvania law, a disclaimer relates back for all purposes to the date of the death of the decedent and, unless the decedent's will provides otherwise, the property subject to the disclaimer passes as if the person disclaiming the property had predeceased the decedent. 20 Pa. Cons. Stat. Ann. § 6205 (1999).

Thus, under Pennsylvania law, upon the execution of the proposed disclaimers, as discussed above, the corpus of Trust will pass immediately to Foundation, the remainder beneficiary of Trust, because Sister will be treated as predeceasing Decedent with respect to the disclaimed interests for purposes of Pennsylvania law. Because, as discussed above, Sister's disclaimers will constitute qualified disclaimers under § 2518 and § 20.2055-2(c)(1), the amounts passing to Foundation as a result of Sister's disclaimers will be treated as passing directly from the Decedent and will qualify for the estate tax charitable deduction under § 2055.

Accordingly, we conclude that the value of IRA#1, IRA#2, IRA#3, and the six Annuity Contracts, and any other assets included in Decedent's gross estate that will pass to the Foundation as a result of the proposed disclaimers discussed above, will qualify for an estate tax charitable deduction under § 2055.

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.

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 the 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. Except as specifically ruled above, no opinion is expressed as to the federal tax consequences of the facts described above under the cited provisions or any other provisions of the Code or regulations.

PLR110911-00

A copy of this letter should be attached to any gift, estate, or generation-skipping transfer tax returns that you may file relating to these matters.

Sincerely,

Associate Chief Counsel
(Passthroughs and Special Industries)

By
George Masnik
Chief, Branch 4

Enclosure
Copy for §6110 purposes