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**Department of the Treasury**

**P.O. Box 7604  
Ben Franklin Station  
Washington, DC 20044**

**Person to Contact:**

**Telephone Number:**

**Refer Reply To:**

CC:DOM:P&SI:4 - PLR-113096-98

**Date:** October 26,1998

Legend:

Decedent =  
Child =  
Will =

Trust =

Charitable Trust =

Trustees =

This is in response to your letter dated June 16, 1998, in which you requested rulings under §§ 2518 and 2055 of the Internal Revenue Code. Specifically, you request rulings that:

1. The irrevocable and unqualified refusal by Child to accept certain property passing under Decedent's Trust will constitute a qualified disclaimer under § 2518(b).

2. The property disclaimed by Child and segregated in the Disclaimed Property Fund of Charitable Trust will qualify for an estate tax charitable deduction under § 2055.

According to your submission, Decedent died testate on January 24, 1998, a resident of New York. Article FIFTH of Decedent's Will provides that Decedent's residuary estate is to be distributed to Trust, a revocable trust created by Decedent during her lifetime.

Under Article FIFTH(A)(1) of the Trust, Child is bequeathed an amount equal to the greater of:

(a) One-third of: Decedent's total gross estate minus the sum of funeral and administration expenses, debts, mortgages and liens, all as shown on the federal estate tax return for Decedent's estate, but before any death taxes, and as adjusted for any increase in the amount so determined resulting from any audit of said return or other cause; or

(b) \$3,000,000.

Under Article FIFTH(B)(4) of the Trust, after the bequests to Child and the other specified individuals and charitable institutions are satisfied, the entire balance of the assets in the Trust fund is to be distributed to Charitable Trust, previously established by the Decedent and Decedent's spouse. It is represented that Charitable Trust is exempt from federal income tax as an organization described in § 501(c)(3). Under the Trust, if Charitable Trust is not an organization described in §§ 170(c), 2055(a), and 2522(a) at the time any distribution is to be made, Trustees are to distribute the remaining balance of Trust to such organizations as they select that are described in these Code sections.

Article III(A) of Charitable Trust's governing instrument provides that Charitable Trust is to be managed by a Committee. The Committee must consist of at least three members, one of whom must be Child, for so long as Child is living and competent and wishes to serve as a member of the Committee. Under Article III (B), for so long as Child is a member of the Committee, Child shall solely exercise all powers, duties, and functions of the Committee.

Article VI of Charitable Trust provides that the trust is created and shall be operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals.

Article VII of Charitable Trust states that Trustees shall not make any payments from the Charitable Trust fund which may jeopardize the tax exempt status of the trust under § 501(c)(3). Such payments shall be made only upon and in accordance with the written directions of the Committee or as may be required by restricted donations.

Article XII of Charitable Trust permits Child to amend Charitable Trust. However, no such amendment shall permit any part of the trust fund to be used, administered, or distributed

for any purpose other than those set forth in Article VI, nor can any amendment result in termination or revocation of the trust.

Article XIV permits the Committee to remove the Trustees at any time.

The estimated value of Decedent's gross estate exceeds \$30,000,000.00. Therefore, Child will receive a bequest, under Article FIFTH(A)(1) of the Trust, of an amount in excess of \$10,000,000. Child proposes to execute a disclaimer pursuant to which she will disclaim \$2,000,000 of this bequest. Under applicable state law, Child will be treated as predeceasing Decedent with respect to the disclaimed amount. Accordingly, under Article FIFTH(B)(4) of the Trust, the disclaimed amount will pass to Charitable Trust. In addition, Child proposes to disclaim any right to make any decisions or vote on any proposals regarding the distribution of any part of the disclaimed funds and any right to amend Charitable Trust under Article XII with respect to the disclaimed funds. Child will also waive any right to discharge or elect any member of the Committee having any authority over the disclaimed funds.

Child will also amend Charitable Trust, pursuant to the authority granted in Article XII of Charitable Trust. The amendments will provide that the disclaimed funds are to be placed in a "Disclaimed Property Fund" of Charitable Trust and held separate from all other assets of Charitable Trust. Child will have no right, under Article XII, to amend Charitable Trust with respect to the Disclaimed Property Fund. The Charitable Trust Committee will then be divided into two subcommittees. One subcommittee will be known as the "Unrestricted Funds Committee" and will manage any assets of the Charitable Trust fund which are not disclaimed assets. The other subcommittee will be known as the "Disclaimed Property Funds Committee" and will manage the assets of the Charitable Trust fund which have been disclaimed by Child.

Child may only serve as a member of the Unrestricted Funds Committee. Child is prohibited from serving on the Disclaimed Property Funds Committee. As a result, Child will not be entitled to direct or vote on any distributions from the Disclaimed Property Fund. The independent members of the Disclaimed Property Funds Committee (that is, those persons other than Child or anyone related or subordinate to Child within the meaning of §672(c) of the Internal Revenue Code) will have the sole authority to direct the distribution of the entire principal of the Disclaimed Property Fund, and any income generated by the assets in the Disclaimed Property Fund.

Child will have no right to discharge, appoint, or elect any member of the Disclaimed Property Fund Committee. Only

independent members of the Committee currently in office or hereafter appointed will exercise this authority.

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, the Federal estate, gift, and generation-skipping transfer tax provisions will apply to that interest as if it had never been transferred to such person.

Under § 2518(b), the term qualified disclaimer means an irrevocable and unqualified refusal by a person to accept an interest in property, provided: (1) such refusal is in writing; (2) the disclaimer 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 which is 9 months after the later of the date on which the transfer creating the interest in such person is made, or the day on which such person attains age 21; (3) the person disclaiming the interest 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 to the spouse of the decedent or to a person other than the person making the disclaimer.

Under § 25.2518-1(b) of the Gift Tax Regulations, if a qualified disclaimer is made, the property is treated, for Federal gift, estate, and generation-skipping transfer tax purposes, as passing directly from the transferor, and not from the disclaimant, to the person entitled to receive the property as a result of the disclaimer. Thus, the disclaimant is not treated as making a gift.

Section 25.2518-2(d)(2) states that if a beneficiary who disclaims an interest in property is also a fiduciary, the disclaimant 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.

Under § 25.2518-2(e), in general, 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. The disclaimer will not be qualified 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 or transfer of the property or interest in property to another person) unless such power is limited by an ascertainable standard.

Section 25.2518-3(c) states that a disclaimer of a specific pecuniary amount out of a pecuniary or nonpecuniary bequest or gift which satisfies the other requirements of a qualified disclaimer under § 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 that was not disclaimed. The 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 the basis that is fairly representative of value changes that may have occurred between the date of transfer and the date of disclaimer.

Under New York law, any beneficiary of a disposition may renounce all or part of the beneficiary's interest. Unless the creator of the disposition has otherwise provided, the filing of a renunciation has the same effect with respect to the renounced interest as though the renouncing person had predeceased the creator or the decedent. N.Y. Estates, Powers, and Trusts Law, § 2-1.11 (McKinney 1998).

Under § 2055(a), for estate tax purposes, 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 the use of any corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes. A trust that qualifies under § 501(c)(3) is one that is organized and operated exclusively for these purposes.

Section 20.2055-2(c)(1) of the Estate Tax Regulations states 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 which falls into the bequest, devise, or transfer as the result of a qualified disclaimer under § 2518.

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, 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 § 2036.

#### Issue 1

In the present case, any property that is disclaimed by Child will, under applicable state law and according to the terms of the Trust, pass to Charitable Trust. The disclaimed property will be placed in a "Disclaimed Property Fund" in Charitable Trust. Child is precluded from serving on the Disclaimed Property Funds Committee and cannot participate in any decisions or vote on any proposals to direct the distribution of any part of the disclaimed funds. Child is also prohibited from discharging or electing any member of the Committee having any authority over the disclaimed property.

We conclude that assuming the other requirements of § 2518 are satisfied, including the requirements of § 25.2518-3(c), the disclaimer will constitute a qualified disclaimer under § 2518.

#### Issue 2

It is represented that Charitable Trust is a trust described in § 2055(a)(2) and is exempt from taxation under § 501(c)(3). Under applicable state law and the terms of Trust, any amount disclaimed by Child will pass to Charitable Trust. Accordingly, based on the representations noted above and assuming the disclaimers are qualified disclaimers under § 2518, the property passing to Charitable Trust as a result of Child's disclaimer and segregated in the Disclaimed Property Fund will qualify for an estate tax charitable deduction under § 2055. The amount deductible under § 2055 is limited to the amount disclaimed (\$2,000,000) and does not include any income attributable to the disclaimed amount under § 25.2518-3(c).

This ruling is based on the representations noted above and 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 this 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 or law, a request for reconsideration of this ruling should be submitted to this office.

Except as specifically ruled herein, we express no opinion as to the consequences of this transaction under the cited provisions of the Code or under any other provisions of the Code.

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

Sincerely,

Assistant Chief Counsel  
(Passthroughs and Special  
Industries)

By \_\_\_\_\_  
George Masnik  
Chief, Branch 4

Enclosure  
Copy for section 6110 purposes