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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B04 - PLR - 135837-02

Date:

OCTOBER 02, 2002

Re:

Legend

Trust	=
Decedent	=
Sister	=
Brother	=
X	=
Cousin	=
Charity 1	=
Charity 2	=
Date 1	=
Date 2	=
State	=
Disclaimer Statute	=

Dear :

This is in response to your June 28, 2002 letter and other correspondence in which you request a ruling that the proposed disclaimer will be a qualified disclaimer under section 2518 of the Internal Revenue Code, and that the proposed reformation of Decedent's testamentary Trust will be a qualified reformation under section 2055(e)(3).

Decedent executed his will on Date 1, and died on Date 2. Sister is the personal representative of the estate of Decedent.

Section 3.1.A. of Decedent's will provides for the disposition of Decedent's residuary estate as follows:

The Trustees shall divide the trust estate into a sufficient number of equal shares so that, one such share shall be set aside and held in trust for Sister, if she survives me; one such share shall be set aside and held in trust for my brother, Brother, and his

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wife, X, if either or both of them survive me, or if they both fail to survive me, such share shall be paid over and distributed to Charity 1, to be used for its general purposes without restriction as to the use of income or principal; one such share shall be paid over and distributed, free of further trust, to my cousin, Cousin, and his wife, jointly if both survive me, or all to the survivor, if only one of them survives me, and if both of them do not survive me, such share shall be paid over and distributed to their then living descendants, per stirpes; and one such share shall be paid over and distributed to Charity 2, to be used for its general purposes without restriction as to its use of income or principal.

Section 3.1.B. provides that the shares set aside in trust under Section 3.1.A. shall be held and administered by the Trustees for the trusts and purposes hereinafter set forth. Section 3.1.B.(1) provides that from the time of Decedent's death, the Trustees shall pay the income from such share to the beneficiary or beneficiaries for whom such share was set aside.

Section 3.1.B.(2) provides that in addition to the payment of income, the Trustees shall pay to or for the benefit of such beneficiary or beneficiaries from the principal of such share such amounts as the Trustees may deem advisable to provide for such beneficiary's maintenance in health and reasonable comfort, and support in his or her accustomed manner of living.

Section 3.1.B.(3)(b) provides that upon the death of the survivor of Brother and X, the trust share set aside for their benefit shall be paid over and distributed to Charity 1, to be used for its general purposes without restriction as to the use of income or principal. It is represented that Charity 1 is an organization which qualifies as a charitable organization under sections 170(c) and 2055(a).

Brother predeceased Decedent, and is survived by X.

X proposes to unqualifiedly and irrevocably disclaim, renounce, and refuse to accept any interest, property or benefit in, to, or from all rights X has under section 3.1.B.(2) of Decedent's will. It is represented that X has not received the interest or any benefits of the Trust established under section 3.1.B.(2) and that the disclaimed interest will pass without direction by her. It is represented that X's disclaimer will be in writing and delivered to the personal representative of Decedent's estate within nine months after the date of Decedent's death, at which time it will become irrevocable. X does not disclaim her right to the income of the testamentary Trust under section 3.1.B.(1) of Decedent's will, or any distribution to which X might become entitled by virtue of a reformation of the Trust.

The personal representative and Trustees propose to petition the appropriate court to reform the Trust to comply with the requirements of a charitable remainder

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unitrust described in section 664(d)(2). The Trust, as reformed, will require the Trustees, in each taxable year of the trust, accounting from the date of Decedent's death, to pay X during her lifetime in quarterly installments at the end of each quarter, a unitrust amount equal to 6.6 percent of the net fair market value of the assets of the trust valued as of the first day of such taxable year of said trust. Upon X's death, the remaining balance of the Trust property will be paid to Charity 1.

You have requested the following rulings:

1. X's proposed disclaimer of her right to receive principal distributions from Decedent's testamentary Trust will be a qualified disclaimer under section 2518(b).
2. The proposed reformation of 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 Trust, as reformed.

RULING NO. 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 provisions.

Section 2518(b) defines the term "qualified disclaimer" as 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.

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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. 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 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.

State Disclaimer Statute provides that where devolution to the disclaimant is expressly conditioned on the disclaimant's survival of the deceased owner, the property or interest disclaimed devolves as if the disclaimant had died immediately before the deceased owner.

In this case, X proposes to disclaim her right to receive distributions from the Trust corpus pursuant to Section 3.1.B.(2) of Decedent's will. X'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(b) are satisfied, we conclude that the proposed disclaimer will be a qualified disclaimer under section 2518.

RULING NOS. 2 AND 3

Section 2055(a) provides in part that, 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, educational and certain other purposes.

Section 2055(e)(2) disallows the estate tax charitable deduction where an interest in property (other than an interest described in section 170(f)(3)(B)) passes or has passed from the decedent to a person, or for a use, described in section 2055(a), and an interest (other than an interest which is extinguished upon the decedent's death) in the same property passes or has passed (for less than adequate and full consideration in money or money's worth) from the decedent to a person, or for a use, not described in section 2055(a) unless-

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(A) in the case of a remainder interest, such 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

(B) in the case of any other interest, such interest is in the form of a guaranteed annuity or is a fixed percentage distributed yearly of the fair market value of the property (to be determined yearly).

Section 2055(e)(3)(A) provides that a deduction shall be allowed under section 2055(a) in respect of any "qualified reformation."

Section 2055(e)(3)(B) provides that the term "qualified reformation" means a change of a governing instrument by reformation, amendment, construction, or otherwise which changes a reformable interest into a qualified interest, but only if-

(i) any difference between (I) the actuarial value (determined as of the date of decedent's death) of the qualified interest, and (II) the actuarial value (as so determined) of the reformable interest, does not exceed 5 percent of the actuarial value (as so determined) of the reformable interest,

(ii) in the case of (I) a charitable remainder interest, the nonremainder interest (before and after the qualified reformation) terminates at the same time, or (II) any other interest, the reformable interest and the qualified interest are for the same period, and

(iii) such change is effective as of the date of decedent's death.

Section 2055(e)(3)(C)(i) defines the term "reformable interest" to mean any interest for which a deduction would be allowable under section 2055(a) at the time of the decedent's death but for section 2055(e)(2).

Section 2055(e)(3)(C)(ii) provides that the term "reformable interest" does not include any interest unless, before the remainder vests in possession, all payments to persons other than an organization described in section 2055(a) are expressed either in specified dollar amounts or a fixed percentage of the fair market value of the property.

Section 2055(e)(3)(C)(iii)(I) provides, however, that section 2055(e)(3)(C)(ii) shall not apply to any interest if a judicial proceeding is commenced to change such interest into a qualified interest not later than the 90th day after the last date (including extensions) for filing an estate tax return, if an estate tax return is required to be filed.

Section 2055(e)(3)(D) defines a "qualified interest" as an interest for which a deduction is allowable under section 2055(a).

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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 beneficial interest only insofar as that interest is presently ascertainable, and hence severable from the noncharitable interest.

In the instant case, X'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 interest is treated as never having passed to X. Further, as a result of the disclaimer, X will be treated under applicable local law as if she predeceased Decedent with respect to the disclaimed interest. Thus, for estate tax purposes, as of the date of Decedent's death, X's right to receive trust income is deemed to be the only noncharitable interest in Trust. Therefore, we conclude that, if the disclaimer is executed and the requirements of section 2518 are otherwise satisfied, the charitable interest in 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). The interest passing to X was not expressed in terms of either specified dollar amounts or a fixed percentage of the fair market value of the property as required by section 2055(e)(3)(C)(ii). However, the proposed reformation, as represented, will meet the requirements under section 2055(e)(3) to be a qualified reformation.

The charitable remainder interest in the proposed reformed trust will be a reformable interest because it is represented that the interest will be expressed in a fixed percentage of the fair market value of the property, and a judicial proceeding to reform the trust will commence within 90 days of the date that the Decedent's Federal estate tax return is due.

Based on an interest rate of 5.6 percent, the factor for determining the actuarial value of the charitable remainder interest in Trust prior to reformation is 0.77220 for each one dollar of Trust corpus at the date of Decedent's death (based on the assumption that the entire trust income would be distributed annually). The factor for determining the actuarial value of the charitable remainder interest in Trust, as reformed, is 0.73505 for each one dollar of Trust corpus at the date of Decedent's death. Thus, the difference between the actuarial value of the reformable interest in Trust and the qualified interest after formation will be less than 5 percent of the actuarial value of the reformable interest. Moreover, X's interest before and after the proposed reformation will terminate at the same time (i.e. X's death). The proposed reformation will be effective as of the date of Decedent's death. Accordingly, the proposed reformation will be a qualified reformation.

Therefore, 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 section 664(d)(2).

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If the reformed charitable remainder trust meets the requirements of a charitable remainder unitrust as described under section 664, the present value of the remainder interest in Trust, as reformed, determined in accordance with section 20.2055-2(f)(2)(ii), will be allowed as an estate tax charitable deduction under section 2055(a).

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.

Except as expressly provided herein, we express or imply no opinion on the Federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter under any other provisions of the Code.

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

Sincerely,

Lorraine E. Gardner
Senior Counsel
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures

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