

Internal Revenue Service

Index No.: 2518.02-00
2518.04-00
2055.12-00
2055.12-10

Number: **200010019**

Release Date: 3/10/2000

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-115142-99

Date: December 6, 1999

Re:

Legend:

Trust =
Trustee =
Decedent =
Daughter =
Charity =
Date 1 =
Date 2 =
Date 3 =
State X =

Dear _____ :

This is in response to your letter dated October 12, 1999, and prior submissions in which you request a ruling that the proposed disclaimer will be a qualified disclaimer under § 2518 of the Internal Revenue Code, and the proposed reformation of a trust created under Section 3 of Article III of Trust will be a qualified reformation under § 2055(e)(3).

Decedent executed Trust on Date 1, and amended Trust during his lifetime. Decedent executed the amendment to Trust that created the trust under Section 3 of Article III on Date 2. Decedent died on Date 3.

Under Section 3 of Article III of Trust, the balance of the trust (after payment of expenses, debts, and certain bequests) is to be held in trust for the benefit of Daughter. Under Paragraph (a) of Section 3, Trustee is to pay the entire net income to Daughter at least quarter-annually. Under Paragraph (b) of Section 3, if at any time the income of Trust together with other resources readily available to Daughter are insufficient for Daughter's support, maintenance and medical care, in her accustomed manner of living, Trustee may make principal distributions to Daughter. Under Paragraph (c) of Section 3, upon Daughter's death, or upon Decedent's death if Daughter fails to survive him, the trust remainder is to be distributed to Charity, an organization described in § 170(c).

Daughter proposes to disclaim her interest as a discretionary distributee of Trust's corpus available to her under Paragraph (b) of Section 3 of Article III. The proposed disclaimer specifically states that the disclaimer is not to be construed to extend to any other distribution to which Daughter may become entitled by virtue of a reformation of Trust. Trustee represents

that Daughter has not received the interest or any benefits of the trust established under Section 3 of Article III.

Trustee has filed a petition with the appropriate court to reform Trust pursuant to § 2055(e)(3) to comply with the requirements of a charitable remainder unitrust described in § 664(d)(2). Trust will provide for a single unitrust payment equal to 6 percent of the net fair market value of Trust assets valued annually, at the beginning of each taxable year of Trust. The unitrust payment will be payable for Daughter's life. On Daughter's death, Trust corpus will be paid to Charity.

Trustee has requested the following rulings:

1. Daughter's proposed disclaimer of her right to receive principal distributions will constitute a qualified disclaimer under § 2518(b) of the Internal Revenue Code.
2. The proposed reformation of Trust will be a qualified reformation under § 2055(e)(3).
3. An estate tax charitable deduction will be allowed for the present value of the remainder interest in Trust, as reformed.

ISSUE 1:

Section 2046 of the Internal Revenue Code 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 of an interest in property, the 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) the disclaimer is in writing; (2) the disclaimer is received by the transferor of the interest, his legal representative, or the holder of legal title to the property, not later than the date which is 9 months after the later of the date on which the transfer creating the interest is made or the date on which the person refusing the interest 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 the disclaimer, the interest passes without any direction by 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.

Under § 25.2518-2(c)(1), the written disclaimer must be delivered no later than the date which is 9 months after the date on which the transfer creating the interest in the disclaimant is made.

Under § 25.2518-2(d)(1), 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.

Under § 25.2518-2(e)(1), 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, unless the disclaimant is the spouse of a decedent. If there is an express or implied agreement that the disclaimed interest is to be given to a person specified by the disclaimant, the disclaimant will be treated as directing the transfer of the property interest.

Section 25.2518-3(a)(1) provides that, if the requirements of § 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.

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 § 2518 are met.

In the present case, Daughter proposes to disclaim her right to receive distributions from Trust corpus pursuant to Paragraph (b) of Section 3 of Article III of Trust. Daughter's interest in the corpus of Trust is a separate interest in Trust for purposes of § 2518. Accordingly, assuming the other requirements of § 2518 are satisfied, we conclude that the proposed disclaimer will be a qualified disclaimer under § 2518.

ISSUES 2 and 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 § 664, or a pooled income fund described in

§ 664(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 § 2055(e)(2), the reformation will be a qualified reformation and the charitable interest will be deductible under § 2055(a) if the following requirements are satisfied:

1. The interest is one for which a deduction would be allowable under § 2055(a) at the time of the decedent's death but for the requirements in § 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 or the fair 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 in so far as that interest is presently ascertainable and, hence, severable from the noncharitable interest.

In this case, Daughter's disclaimer of her interest in the corpus of Trust will be a qualified disclaimer under § 2518. Thus, for estate tax purposes, the interest is treated as never having passed to Daughter. Further, as a result of the disclaimer, Daughter 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, Daughter'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 § 2518 are otherwise satisfied, the charitable interest in Trust prior to reformation would have qualified for an estate tax charitable deduction under § 2055(a), but for the provisions of § 2055(e)(2). In other words, the value of the remainder interest in Trust, determined based on the assumption that all Trust income is distributed to the income beneficiary, would qualify for a charitable deduction, but for the provisions of § 2055(e)(2). Accordingly, the first requirement for a qualified reformation under § 2055(e)(3) is satisfied.

The proposed reformation satisfies the second requirement for a qualified reformation under § 2055(e)(3) because Daughter's interest both before and after the proposed reformation will terminate at the same time (i.e., at Daughter's death). Moreover, the

reformation will be effective as of the date of Decedent's death. Therefore, the proposed reformation satisfies the third requirement.

With respect to the fourth requirement, based on the interest rate under § 7520 for the month of Decedent's death of 6.2 percent, the factor for determining the actuarial value of the charitable remainder interest in Trust prior to reformation is 0.23625 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 0.23921 for each one dollar of Trust corpus at Decedent's death. 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 § 2055(e)(3).

The proposed reformation will satisfy the fifth requirement under § 2055(e)(3) because, even though Daughter'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 is represented that a judicial proceeding to reform the trust has already been commenced, satisfying the requirement that a judicial proceeding to reform the trust must be commenced within 90 days of the date that the Decedent's federal estate tax return is due.

Consequently, we conclude that the proposed reformation will be a qualified reformation for purposes of § 2055(e)(3) provided that the reformation is effective under local law and the Trust as reformed satisfies the requirements of § 664(d)(2).

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

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

In accordance with the power of attorney on file with this office, we are sending a copy of this letter to the taxpayer.

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

Sincerely yours,
James F. Hogan
Acting Assistant to the Branch Chief
Branch 4

Enclosure:
Copy for section 6110 purposes