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Internal Revenue Service
Index No.: 2518.02-00
2518.04-00
2056.01-00

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-114721-99
Date: November 12, 1999

Re:
TIN:

Legend:

Decedent =
TIN:

Spouse =
TIN:

Child =
TIN:

Charity =

TIN:

Date #1 =

Date #2 =

Date #3 =

State X =

Dear :

This is in response to your letter dated , , and other submissions in which you specifically request the following rulings:

1. The proposed disclaimers will constitute qualified disclaimers under § 2518(b) of the Internal Revenue Code.

2. The property interests passing to Spouse as a result of the proposed disclaimers will qualify for the estate tax marital deduction under § 2056(a).

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Decedent and his Spouse executed a joint will on Date #1. Decedent died on Date #2, survived by his Spouse and Child. Child had no issue. The will was admitted to probate on Date #3. The will provides that Decedent's entire estate is to pass to Spouse outright; provided that if Spouse subsequently remarries, one-half of the assets, in terms of fair market value, owned by Decedent and Spouse is to pass immediately on such remarriage to Child. On Spouse's death, or in the event Spouse does not survive Decedent by more than 30 days, the remaining estate is to pass to Child, and if Child is not then living, and has no issue, then to Charity.

Spouse, Child and Charity, in accordance with the requirements of the laws of State X, will execute disclaimers of their respective rights to receive property under Decedent's will. Spouse will disclaim all amounts she would otherwise be entitled to receive under the will. Child will disclaim all amounts she would otherwise be entitled to receive under Decedent's will and under § 38(b) and 45 of the State X Probate Code (pertaining to intestate succession), except for assets with a value equal to the pecuniary amount needed to increase Decedent's taxable estate to the largest amount that will not result in a federal estate tax being imposed on Decedent's estate. Charity will disclaim all amounts it would otherwise be entitled to receive as a result of Child's disclaimer. It is represented that all of the property of the estate constituted the community property of Decedent and Spouse. It is represented that there is no agreement, expressed or implied, between or among the parties, that any of the disclaimants will be compensated or benefitted in any way in consideration for executing the disclaimers. It is also represented that none of the disclaimants have previously accepted the property or any of its benefits.

Prior to the submission of this ruling request, Spouse as executrix, filed an Original Petition for Declaratory Relief in State X Probate Court seeking a determination of the effect of the proposed series of disclaimers under the laws of State X. Since a charity is involved, the Attorney General of State X was provided with notice of the proceeding and prior to the hearing, filed a Waiver of Intervention acknowledging that it received notice of the proceeding and that it declined to exercise its right to intervene under the laws of State X. The Agreed Order Granting Declaratory Relief provided that: 1) Charity, as potential beneficiary of the estate, is authorized to disclaim its interests in Decedent's estate in accordance with § 37A of the State X Probate Code; and 2) The disclaimers, if executed and delivered in accordance with § 37A will cause those assets of Decedent's estate that are subject to all three disclaimers executed by the respective parties, to pass as though Decedent had died intestate, outright to Spouse, in accordance with §§ 38 and 45 of the State X Probate Code.

Ruling No. 1

Section 37A of the State X Probate Code (1999) provides that unless the decedent's will provides otherwise, property subject to a disclaimer shall pass as if the person disclaiming or on whose behalf a disclaimer is made had predeceased the decedent and a future interest that would otherwise take effect in possession or enjoyment after the termination of the estate or interest that is disclaimed takes effect as if the disclaiming beneficiary had predeceased the decedent.

Section 37A (a) states that in the case of property receivable by a beneficiary, the disclaimer shall be evidenced by a written memorandum, acknowledged before a notary public

or other person authorized to take acknowledgments of conveyances of real estate. Unless the beneficiary is a charitable organization or governmental agency of the state, a written memorandum of disclaimer disclaiming a present interest shall be filed not later than nine months after the death of the decedent and a written memorandum of disclaimer disclaiming a future interest may be filed not later than nine months after the event determining that the taker of the property or interest is finally ascertained and his interest is indefeasibly vested. If the beneficiary is a charitable organization or a governmental agency of the state, a written memorandum of disclaimer disclaiming a present or future interest shall be filed not later than nine months after the beneficiary receives the notice required by § 128A of the State X Probate Code.

Section 37A (b) provides that unless the beneficiary is a charitable organization or governmental agency of the state, copies of any written memorandum of disclaimer shall be delivered in person to, or shall be mailed by registered or certified mail to and received by, the legal representative of the transferor of the interest or the holder of legal title to the property to which the disclaimer relates not later than nine months after the death of the decedent or, if the interest is a future interest, not later than nine months after the date the person who will receive the property or interest is finally ascertained and the person's interest is indefeasibly vested. If the beneficiary is a charitable organization or government agency of the state, the notices required shall be filed not later than nine months after the beneficiary receives the notice required by § 128A of the State X Probate Code.

Section 38 (b) provides that where any person having title to any estate, real, personal or mixed, other than a community estate, shall die intestate as to such estate, and shall leave a surviving husband or wife, such estate of such intestate shall descend and pass as follows: (1) If the deceased has a child or children, or their descendants, the surviving husband or wife shall take one-third of the personal estate, and the balance of such personal estate shall go to the child or children of the deceased and their descendants. The surviving husband or wife shall also be entitled to an estate for life, in one-third of the land of the intestate, with remainder to the child or children of the intestate and their descendants. (2) If the deceased has no child or children, or their descendants, then the surviving husband or wife shall be entitled to all the personal estate, and to one-half of the lands of the intestate, without remainder to any person, and the other half shall pass and be inherited according to the rules of descent and distribution; provided, however, that if the deceased has neither surviving father nor mother nor surviving brothers or sisters, or their descendants, then the surviving husband or wife shall be entitled to the whole of the estate of such intestate.

Section 45 (a) provides that on the intestate death of one of the spouses to a marriage, the community property estate of the deceased spouse passes to the surviving spouse if: (1) no child or other descendant of the deceased spouse survives the deceased spouse; or (2) all surviving children and descendants of the deceased spouse are also children or descendants of the surviving spouse.

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.

Section 2518(c) provides that, a disclaimer of an undivided portion of an interest which meets the foregoing requirements will be treated as a qualified disclaimer of such portion of the interest.

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.

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 disclaimer 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. The requirements of a qualified disclaimer are not satisfied 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. A person may make a qualified disclaimer of a beneficial interest in property even if after such disclaimer the disclaimant has a fiduciary power to distribute to designated beneficiaries, but only if the power is subject to an ascertainable standard.

Under § 25.2518-2(e)(3), 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

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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. For example, if a disclaimant who is not a surviving spouse disclaims a specific bequest of a fee simple interest, and as a result of the disclaimer, the property passes to a trust in which the disclaimant has a remainder interest, the disclaimer will not be a qualified disclaimer unless the remainder interest is also disclaimed.

Section 25.2518-2(e)(5), Example (2), describes a situation where D, a resident of State Y, died testate on June 30, 1978. E, an heir at law of D, received specific bequests of certain severable personal property from D. E disclaimed the property transferred by D under the will. The will had no residuary clause and made no provision for the distribution of property in the case of a beneficiary's disclaimer. The disclaimer laws of State Y provide that such property shall pass to the decedent 's heirs at law in the same manner as if the disclaiming beneficiary had died immediately before the testator's death. The example concludes that because State Y's law treats E as predeceasing D, the property disclaimed by E does not pass to E as an heir at law or otherwise. Consequently, if the remaining requirements of section 2518(b) are satisfied, E's disclaimer is a qualified disclaimer under section 2518(a).

In § 25.2518-2(e)(5), Example (3), the facts are the same as in Example (2), except that State Y has no provision treating the disclaimant as predeceasing the testator. The example concludes that E's disclaimer satisfies section 2518(b)(4) only to the extent that E does not have a right to receive the property as an heir at law. Had E disclaimed both the share E received under D's will and E's intestate share, the requirement of section 2518(b)(4) would have been satisfied.

Section 25.2518-3(a)(1) provides that the disclaimer of an undivided portion of a separate interest in property may be a qualified disclaimer.

Section 25.2518-3(c) provides 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 or bequest that was not disclaimed.

Section 25.2518-3(d), Example (20), considers a situation where A bequeathed the residuary estate to B. B disclaims a fractional share of the residuary estate. Any disclaimed property will pass to A's surviving spouse, W. The numerator of the fraction disclaimed is the smallest amount which will allow A's estate to pass free of Federal estate tax and the denominator is the value of the residuary estate. The example concludes that B's disclaimer is a qualified disclaimer.

In the present case, based on the representations made and the facts presented, we conclude that the proposed disclaimers by Spouse, Child and Charity will constitute qualified

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disclaimers under § 2518 (b), assuming the disclaimers are executed and delivered in writing within 9 months of the Decedent's date of death.

Ruling No. 2

Section 2056(a) of the Code provides that the value of the taxable estate shall, except as limited by § 2056(b), be determined by deducting from the value of the gross estate an amount equal to the value of any interest in property which passes or has passed from the decedent to the decedent's surviving spouse, but only to the extent that such interest is included in determining the value of the gross estate.

Section 2056(b)(1) of the Code provides the general rule that no deduction shall be allowed for an interest passing to the surviving spouse 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 surviving spouse's interest will terminate or fail and an interest in the same property will then pass to and be enjoyed by a person other than the surviving spouse.

Section 20.2056(d)-(2)(b) provides that if an interest passes to a person other than the surviving spouse and (1) that person makes a qualified disclaimer of such property, and (2) the surviving spouse is entitled to such property as a result of the disclaimer, the disclaimed interest is treated a having passed directly from the decedent to the surviving spouse.

In the present case, as a result of the proposed disclaimers by Spouse, Child and Charity under § 37A of the State X Probate Code, the disclaimed interests will pass as though Decedent had died intestate, outright to Spouse, in accordance with §§ 38 and 45 of the State X Probate Code. The interest received by Spouse, as a result of the disclaimers, will not be contingent upon remarriage. Spouse's interest will not terminate or fail, on the lapse of time, on the occurrence of an event or contingency, or on the failure of an event of contingency to occur.

Accordingly, assuming the written disclaimers are qualified disclaimers under § 2518(b) as discussed above, the disclaimed interests will pass outright to Spouse as if Decedent has died intestate, in accordance with the laws of State X. The interest received by Spouse will be treated as passing from the Decedent to Spouse and will qualify for the estate tax marital deduction under § 2056(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.

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,

(signed) George L. Masnik

George L. Masnik
Chief, Branch 4

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