Internal Revenue Service
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Department of the Treasury

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Person to Contact:

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Refer Reply To:
CC:DOM:P&SI:4 - PLR-109343-99
Date: August 11, 1999

Re:

Legend:

Decedent =

Date 1 =

Children =

Grandchildren =

Great Grandchildren =

Trust =

Foundation =
Z =

Child 1 =
Date 2 =

Date 3 =

Court =

This is in response to a letter dated May 14, 1999, and subsequent correspondence submitted on behalf of the Taxpayer, requesting the following rulings:

1. The proposed disclaimers of fractional interests in Trust by Children, as well as the disclaimers by Grandchildren and Great Grandchildren will constitute qualified disclaimers, satisfying the requirements of § 2518.

2. Under § 2518, the disclaimed interests may be funded with an amount, determined based on the value of Trust as of the date of distribution (or if earlier, the date the disclaimed interest

is segregated) equal to the fraction of the Trust interests disclaimed.

3. The value of the property passing to Foundation by reason of the proposed disclaimers will qualify for the estate tax charitable deduction under § 2055(a), assuming Foundation is an organization described in § 2055(a).

Facts

Decedent died on Date 1, survived by 5 children (Children), 19 grandchildren (including one step grandchild) Grandchildren, and 16 great grandchildren (Great Grandchildren).

Prior to her death, Decedent had executed a pour over will and a revocable trust agreement (Trust). Paragraphs 2(a)-(c) of Trust provide for the payment of debts, charges and allowances payable by law, death taxes, and specific bequests under Trust and Decedent's will. Under paragraph 2(c), the residue is to be divided into two equal shares, one-half of the residue is to pass to Foundation and the other one-half is to pass for the benefit of Decedent's children and their lineal descendants, as follows:

Paragraph 2(c)(ii) provides for the disposition of the share passing to Decedent's lineal descendants as follows:

> One (1) such share of trust property shall be equally apportioned by the Trustee among my five (5) children. All property so apportioned to each such child of mine shall be distributed to him or her. In the event any such child of mine shall predecease me, all properties so apportioned to such child shall be reapportioned in equal shares, per stirpes, to such child's children, my grandchildren, who survive such child. All property so apportioned to each of my children's lineal descendants who is a grandchild or more remote lineal descendant of mine who has then attained age fifty (50); two-thirds of all property so apportioned to each such lineal descendant who is a grandchild or more remote lineal descendant of mine who has attained age forty-five (45), but not age fifty (50); and one-third of all property so apportioned to each such lineal descendant who is a grandchild or more remote lineal descendant of mine who has then attained age forty (40), but not age forty-five (45) shall be distributed to him or her, but otherwise, the shares so apportioned

> shall be retained by the Trustee for his or her benefit as a separate trust estate which shall be administered in accordance with Paragraph 3 hereof.

Under paragraph 3(a)and (b), the beneficiary of any trust established for a grandchild or more remote descendant of Decedent will receive the net income of that trust and any amount of principal the trustee determines to be necessary or proper to provide for the support, care, health, welfare or education of the beneficiary and the beneficiary's dependents. In addition, the beneficiary will receive one-third of the principal of the beneficiary's trust upon reaching age 40, one-half of the principal upon reaching age 45, and all of the remaining principal upon reaching age 50, at which time the trust will terminate. Under paragraph 3(d),if a beneficiary's dies before a trust terminates, the remaining principal will be apportioned among the beneficiary's then-living lineal descendants, or if none, among the then-living lineal descendants of the individual next in the line of ascent from the deceased beneficiary to Decedent, including Decedent, of whom at least one lineal descendant is then living. Property apportioned to a child of Decedent will be paid outright. Property apportioned to a grandchild or more remote descendant of Decedent will be paid outright to a beneficiary who has attained age 50, two-thirds to a beneficiary age 45 through 49, and one-third to a beneficiary age 40 through 44. That part of any share not paid outright will be held for the individual to whom it is apportioned in a separate trust administered under the terms of paragraph 3.

Child 1 is currently serving as the trustee of Trust and the personal representative of Decedent's estate. Under paragraph 6(c), another son of Decedent and an unrelated individual are named as successor trustees. Under paragraph 6(d), a majority of the adult competent beneficiaries of Trust may designate an individual or bank as trustee in the case of a vacancy.

Paragraph 7(h) provides that any separate trust created under Trust for a beneficiary who is also the beneficiary under an irrevocable trust created by Decedent on Date 3 or under a specified trust created by Child 1 for his specified child (or a substantially similar trust created by Decedent) will be consolidated with that irrevocable trust under its terms "notwithstanding any provision [in Trust] concerning such trust estate which might be different from any provision of such Irrevocable Trust." It is represented that each of the Grandchildren is the beneficiary of an irrevocable trust described in paragraph 7(h) of Trust. It is further represented that these trusts provide for distributions to the beneficiaries pursuant to trustee powers limited by ascertainable standards.

Paragraph 7(k) provides:

> If upon the death of the beneficiary of any trust estate administered in accordance with Paragraph 1 or 3 hereof there shall be no person living to whom the remaining principal of such trust estate is thereupon to be distributed or for whose benefit such remaining principal is thereunder to be held, in accordance with the forgoing provisions of this instrument, such remaining principal, except to the extent that disposition thereof is made by exercise of any power of appointment created under the foregoing provisions of this instrument, shall be distributed as follows:
>
> Such remaining principal shall be distributed to [Foundation].

Paragraph 7(n) provides that, for all purposes under the trust agreement, to the extent a bequest to a grandchild or more remote lineal descendant of Decedent, or to a trust for such individual, would result in a generation-skipping transfer tax, that bequest will be void and will pass to the "child" of Decedent who is the parent, grandparent, or great grandparent of the original beneficiary of the voided bequest. Prior to her death, Decedent had allocated all but a de minimus amount of her generation-skipping transfer exemption (GST exemption) provided under § 2631. It is represented that her remaining GST exemption as of her date of death was $Z.

Trust is silent regarding the effect of a disclaimer by a beneficiary. However, under applicable state law (discussed below) the disclaimed property is distributed as if the disclaimant predeceased the testator/donor.

Decedent and her son, Child 1, established Foundation on Date 2. Foundation is a private foundation as defined in § 509 and is an organization described in § 501(c)(3). Child 1 and another of Decedent's children serve on the Board of Trustees of Foundation along with a third individual who is unrelated to Decedent's family. Under Article II of the Code of Regulations of Foundation, the board of Trustees is authorized to appoint any committees. The Board of Trustees has appointed a ten member grantmaking committee which consists of ten of Decedent's lineal descendants, including four of her children. The grantmaking committee is authorized to designate the charitable recipients of Foundation's funds.

The Code of Regulations of Foundation will be amended by the addition of a new Article VIII. Article VIII will provide that if any funds are received by Foundation due to any disclaimer made by any member of the Board of Trustees or any committee empowered to disburse those funds by way of grants, gifts, or otherwise (a "disclaiming member"), the disclaiming member will have no vote regarding any disbursement of those funds and no right to appoint or discharge the individuals empowered to vote regarding such disbursements. Further Article VIII will provide that those funds be segregated in a separate account and that Article VIII cannot be repealed or amended in any manner that would allow a disclaiming member to possess any voting rights prohibited to them under Article VIII.

After the Code of Regulations of Foundation is amended, each of the Children will disclaim a fractional portion of that child's interest in Trust, including any amounts that may pass to the child as a result of a disclaimer. The fractional interest will be determined by a specified formula.

Each of the adult Grandchildren will disclaim all interests each grandchild has in Trust, except for each grandchild's proportionate share of Trust assets equal to the Decedent's remaining GST exemption. Each of the Great Grandchildren will disclaim all interests each Great Grandchild may have in Trust. A guardian ad litem appointed by Court will execute the disclaimers on behalf of the two minor Grandchildren, all of the Great Grandchildren, and on behalf of the unborn lineal descendants of Decedent.

It is represented that none of the Children, Grandchildren, and Great Grandchildren have accepted any of the benefits with respect to their respective interests in Trust.

State Law

Fla. Stat. ch. 689.21(2)(a) (1999) provides that a beneficiary may disclaim any interest in property which would pass (unless disclaimed) to the beneficiary as donee; as grantee; under any deed, assignment, or other nontestamentary instrument of conveyance or transfer; as beneficiary of an inter vivos trust; as beneficiary of an insurance contract; through exercise or nonexercise of a power of appointment exercisable by deed; through nontestamentary exercise of a power of appointment exercisable by deed or will; as donee of a power of appointment created by a nontestamentary instrument; by succession in any manner described in the subsection to a disclaimed interest; or in any other manner not specifically enumerated in the section under a nontestamentary instrument.

Under Fla. Stat. ch. 689.21(2)(b) (1999), a disclaimer may be made by a guardian on behalf of a minor if, prior to the disclaimer, the guardian has been ordered to disclaim by the court having jurisdiction of the estate of the minor after finding that it is in the best interests of those interested in the estate of such beneficiary and of those who take the beneficiary's interest by virtue of the disclaimer, and not detrimental to the best interests of the beneficiary.

Under Fla. Stat. ch. 689.21(3)(a) (1999), unless the grantor, or a donee of a power of appointment, has otherwise provided by a nontestamentary instrument with reference to the possibility of a disclaimer by the beneficiary, the interest disclaimed shall descend, be distributed, or otherwise be disposed of in the same manner as if the disclaimant had died immediately preceding the death or other event which causes her or him to become finally ascertained as a beneficiary and her or his interest to become indefeasibly fixed both in quality and quantity, and , in any case, the disclaimer shall relate for all purposes to such date, whether filed before or after such death or other event. An interest in property disclaimed shall never vest in the disclaimant.

Fla. Stat. ch. 732.801(2)(a) (1999) provides that a beneficiary may disclaim his or her succession to any interest in property that, unless disclaimed, would pass to the beneficiary as beneficiary of a testamentary trust or in any manner not specifically enumerated in the section under a testamentary instrument.

Under Fla. Stat. ch. 732.801(2)(b) (1999), a disclaimer may be made by a guardian on behalf of a minor if, prior to the disclaimer, the guardian has been ordered to disclaim by the court having jurisdiction of the estate of the minor after finding that it is in the best interests of those interested in the estate of such beneficiary and of those who take the beneficiary's interest by virtue of the disclaimer, and not detrimental to the best interests of the beneficiary.

Under Fla. Stat. ch. 732.801(3)(a) (1999), unless the decedent or a donee of a power of appointment has otherwise provided by will or other appropriate instrument with reference to the possibility of a disclaimer by the beneficiary, the interest disclaimed shall descend, be distributed, or otherwise be disposed of in the same manner as if the disclaimant had died immediately preceding the death or other event that caused her or him to become finally ascertained as a beneficiary and the disclaimant's interest to become indefeasibly fixed both in quality and quantity. The disclaimer shall relate to that date for all purposes, whether recorded before or after the death or

other event. An interest in property disclaimed shall never vest in the disclaimant.

Federal Law

Section 2055(a) provides that for purposes of the federal estate tax, 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 a person or for the use of any corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, no part of the net earnings of which inures to the benefit of any private stockholder or individual.

Section 20.2055-2(c)(1) provides that in the case of decedents 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 a result of a qualified disclaimer described 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, 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. 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 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 25.2518-3(a)(2) provides that the disclaimer of an undivided portion of an interest in a trust may be a qualified disclaimer. Section 25.2518-3(b) provides that an undivided portion of a disclaimant’s separate interest in property must consist of a fraction or percentage of each and every substantial interest or right owned by the disclaimant in such property and must extend over the entire term of the disclaimant’s interest in such property and in other property into which such property is converted.

Analysis

Under Fla. Stat. ch. 689.21(3)(a) and ch. 732.801(3)(a), as a result of their disclaimers, the Children, Grandchildren and Great Grandchildren will be treated as predeceasing Decedent with respect to the disclaimed interest for purposes of paragraphs 2(c)(ii), 7(n), 3(d), and 7(k). Thus, as a result of all of the disclaimers, there will be deemed to be no person living to whom an interest in Trust may be distributed. Under paragraph 7(k), the share disclaimed will therefore pass to Foundation. An order of Court confirmed this result.

Under paragraph 2(c)(ii), the fractional share retained by each of the Children will be distributed outright to each child. Under paragraph 7(h), each grandchild's proportionate share of $Z will be consolidated with the irrevocable trust established for that grandchild and will be held under the terms of that trust. It is represented that these irrevocable trusts provide for distributions to the beneficiaries pursuant to trustee powers limited by ascertainable standards. Thus, as a result of the proposed disclaimers, no assets will remain in Trust and, for purposes of § 25.2518-2(e)(1), none of the disclaimants will ever hold a power as a fiduciary over any of the disclaimed funds that is not limited by an ascertainable standard.

The Code of Regulations of Foundation will be amended before the proposed disclaimers are executed to ensure that none of the disclaimants will have any control over the disclaimed funds from Trust received by Foundation (or the income they generate) or over any individuals who are authorized to direct the disbursement of those funds. In addition, disclaimed funds received by Foundation will be segregated in a separate account. Compare Rev. Rul. 72-552, 1972-2 C.B. 209. Consequently, the interests in Trust disclaimed by each child, grandchild, and great grandchild will pass without any direction on the part of the disclaimant to a person other than the disclaimant, as required under § 25.2518-2(e)(1).

Each of the Children will disclaim, under § 25.2518-3(a)(2) and § 25.2518-3(b), an undivided portion of the entire share provided under paragraph 2(c)(ii) for the child. The disclaimed interest may be funded with an amount, determined based on the value of Trust as of the date of distribution (or if earlier, the date the disclaimed assets are segregated) equal to that fraction of the Trust corpus disclaimed. cf. § 25.2518-3(d), Example 19.

Accordingly, based on the representations made and the facts presented we rule as follows:

1. Assuming the written disclaimers are delivered to the appropriate party within 9 months of Decedent's date of death and the disclaimants have not accepted any of the benefits from the disclaimed property prior to the disclaimers, the proposed disclaimers of fractional interests in Trust by Children, as well as the disclaimers by Grandchildren and Great Grandchildren will constitute qualified disclaimers, satisfying the requirements of § 2518.

2. Under § 2518, the disclaimed interests may be funded with an amount determined based on the value of Trust as of the date of distribution (or if earlier, the date the disclaimed interest is segregated) equal to the fraction of the Trust interests disclaimed.

3. The value of the property passing to Foundation by reason of the proposed disclaimers will qualify for the estate tax charitable deduction under § 2055(a), assuming Foundation is an organization described in § 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.

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,

_____

George L. Masnik
Chief, Branch 4

Enclosure
Copy for section 6110 purposes