Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:4-PLR-137508-01
Date:
October 22, 2001

Legend:

Decedent =

Husband =

Son =

Daughter =

CRUT =

University =
SO =

CF =
Date 1 =
Date 2 =
Date 3 =
Date 4 =
Date 5 =

Probate Code =
State =
Dear :

This is in response to your letter dated October 18**,** 2001 and prior correspondence submitted in which you requested rulings on behalf of Son, Daughter, and Decedent's estate concerning the application of §§ 2518, 2055, and 2056(b)(8) of the Internal Revenue Code.

The facts are represented to be as follows: Decedent and Husband, as settlors, established a charitable remainder unitrust, CRUT, on Date 1. Son and Daughter were designated as trustees. CRUT was initially funded with jointly held securities and there have been no subsequent contributions to CRUT.

Article ONE (A)(1) of CRUT provides that during the lifetime of Decedent and Husband, the trustees are to pay quarter-annually to or for the benefit of Decedent and Husband in equal shares, an annual unitrust amount equal to five and one-half percent (5.5%) of the net fair market value of the principal as of the first day of each taxable year of CRUT, and terminating as to each spouse with the last quarter-annual payment prior to his or her death. Upon the death of the first of Decedent and Husband to die, the entire unitrust amount is to be paid to the survivor of Decedent and Husband. Upon the death of the second of Decedent and Husband to die, the entire unitrust amount is to be paid, in the same manner as provided for Decedent and Husband, to or for the benefit of Son and Daughter for their lifetimes in equal shares, or all to the survivor of Son or Daughter if only one of them survives both Decedent and Husband. Upon the death of the first of Son and Daughter to die, the entire unitrust amount is to be paid to the survivor of Son or Daughter.

Article ONE (A)(2) of CRUT provides that Decedent and Husband reserve the right, exercisable by means of his or her will, to revoke the interest of any recipient of the unitrust amount (other than Decedent or Husband) attributable to Decedent's or Husband's respective contributions to CRUT. Such revoked interest is to be distributed following Decedent's or Husband's death as though such other recipient had predeceased Decedent or Husband.

Article ONE (B) of CRUT provides that upon the death of the last survivor of the recipients, the then principal and any accrued or undistributed income, other than any amount due any of the recipients or their estates under the above provisions, are to be transferred and delivered to those organizations which qualify as organizations described in §§ 170(b)(1)(A), 2055(a) and 2522(a) and have been identified at any time in a written instrument or instruments by Husband during his lifetime or, after his death, at any time by Son and Daughter, jointly during their lifetimes, or by the survivor of them, in proportions or amounts designated by such writing(s) or, in the absence of any such designation(s), to the organizations identified in such writing which so qualify in equal shares. In the absence of such written identification by Husband, or by Son and Daughter or the survivor of them, the principal and accrued or undistributed income is to be transferred to University, provided that if no identified organization or University, as the case may be, is then an organization described in §§ 170(b)(1)(A), 2055(a) and 2522(a), the principal and income is to be transferred to one or more such organizations, described in §§ 170(b)(1)(A), 2055(a) and 2522(a), as is selected by the trustees in the trustees' sole discretion.

On Date 2, Decedent and Husband, as grantors, created a family charitable trust, SO. In a determination letter dated Date 3, SO was determined by the Internal Revenue Service to be a supporting organization to a community foundation public charity, CF, exempt from federal income tax under §§ 501(c)(3) and 509(a)(3). The trustees of SO consist of two (2) family trustees, two (2) CF trustees, and one (1) community trustee (hereinafter referred to collectively as SO Trustees).

Section 5.1 of the SO trust agreement provides that SO is to distribute, at least

annually, an amount equal to substantially all of its net income, i.e., at least eighty-five (85%) of its investment income and other income (including short-term, but not long-term, capital gains) net of direct and indirect investment expenses, or such other amount that satisfies the minimum distribution requirements of Treas. Reg. § 1.509(a)-4(i)(3)(iii)(a) and the administrative and/or judicial rulings thereunder and interpretations thereof (the "minimum distribution requirements"). Any such distribution to CF is to be for its general purposes or for one or more of its activities or programs as the Trustees may identify after consultation with officials of CF, provided that notwithstanding anything in this Article FIFTH to the contrary, distributions from SO are to be made in a manner consistent with such organization's status as a supporting organization under the Internal Revenue Code, and provided, further, that CF is to have full right, power and authority to hold and distribute amounts it receives from SO for purposes deemed appropriate by CF in a manner consistent with CF's mission, CF's status as a community charitable trust under the Internal Revenue Code and SO's status as a supporting organization under the Code.

Section 6.7(a) of SO trust agreement provides that should either family trustees, Decedent or Husband, be unable or unwilling to serve or continue as a family trustee, Daughter, is to fill the first such vacancy in the office of family trustee, and Son, is to fill the second such vacancy in the office of family trustee. Following the death, resignation or incapacity of both of Decedent and Husband to serve as the family trustees, the family trustees are to be Daughter and Son, or their successors as provided. The trust agreement provides, in general, that upon the death, resignation, or incapacity of Daughter or Son to serve as a family trustee, such lineal descendant of Decedent and Husband as such family trustee has designated in an intervivos writing filed with the records of SO, or in his or her will, is to become the successor family trustee. Each successor family trustee is to have the same authority to designate a further successor family trustee from among Decedent's and Husband's lineal descendants in the same manner.

On Date 4, Husband designated SO as CRUT's charitable remainder beneficiary. Under the terms of CRUT, Husband retained the right to change such remainderman at any time and from time to time during his lifetime.

On Date 5, Decedent died. Decedent did not exercise her rights under Article ONE (A)(2) to revoke noncharitable survivor interests with respect to the portion of CRUT attributable to her contributions. Husband is the personal representative of Decedent's estate. Daughter is currently serving as an SO Trustee.

The parties now propose the following transactions. The CRUT Trustees will divide CRUT into two equal and separate trusts. One trust (CRUT No. 1) will be funded with the 50% portion of CRUT assets attributable to Decedent's contribution to CRUT. The other trust (CRUT No. 2) will be funded with the remaining 50% portion of CRUT assets attributable to Husband's contribution to CRUT. The terms of each trust will be identical to the terms of CRUT. Son and Daughter will disclaim, in writing, within 9 months of Decedent's death, their unitrust interests (that take effect on Husband's

death) in CRUT No. 1. Son and Daughter will also disclaim their respective successor power to designate the charitable remainder beneficiaries with respect to CRUT No. 1. Further, Son and Daughter will renounce any right they have as CRUT No. 1 trustees to select the charitable remainder beneficiary of CRUT, if University or any other designated remainder beneficiary loses its public charity status (contingent substitution powers). Finally, Husband will renounce and release any and all right he has to designate the charitable remainder beneficiary with respect to the CRUT No. 1 remainder in a manner that would have the effect of granting to Son and/or Daughter, directly or indirectly, the right to direct the disposition of the CRUT No. 1 remainder.

In conjunction with the proposed disclaimers, the SO Trustees will execute an amendment to the SO trust agreement providing that any assets received by SO as a result of any qualified disclaimer by one or more "Disclaiming Trustees" (which term includes Son and Daughter) is to be held in one or more segregated accounts (collectively referred to as the Special Account), separate from any other assets of SO.

Section 9.1 of the amended SO trust agreement will provide that the right to make distributions from the income and/or principal of Special Account and to make recommendations to CF concerning the uses and/or ultimate recipients of such distributions are to be held exclusively by special trustees (collectively referred to as Special Trustees) who are to be appointed in accordance with § 9.4.

Section 9.2 of the amended SO trust agreement will provide that Special Trustees are to distribute, such portions, or the whole, of the net income and/or principal of Special Account as provided in Article FIFTH of SO.

Section 9.4(a) of the amended SO trust agreement will provide that at all times from the creation of Special Account, the number of Special Trustees in office are to be five (5). Section 9.9 of the amended SO trust agreement will provide that notwithstanding any other provision, any Special Trustee is to be an individual who is not a Disclaiming Trustee or any "related or subordinate party" with respect to any Disclaiming Trustee as the aforesaid quoted term is defined in § 672(c). The provisions of this Article NINTH may not be revoked or amended in any manner that would allow a Disclaiming Trustee or any "related or subordinate party" with respect to any Disclaiming Trustee as the aforesaid quoted term is defined in § 672(c) to serve as Special Trustee.

Probate Code § 6201 provides that a person to whom an interest in property would have devolved by whatever means (including a beneficiary under will) may disclaim it in whole or in part by a written disclaimer which shall: (1) describe the interest disclaimed; (2) declare the disclaimer and the extent thereof; and (3) be signed by the disclaimant. Probate Code § 6203 provides that a disclaimer in whole or in part may be made of any present or future interest, vested or contingent. Probate Code § 6204(B) requires that if the interest would have devolved to the disclaimant by an inter vivos instrument, the disclaimer or a copy thereof is to be delivered to the trustee or other person having legal title to or possession of the property or interest disclaimed or

who is entitled thereto by reason of the disclaimer. Probate Code § 6205(A) provides that a disclaimer relates back for all purposes to the date of the death of the decedent or the effective date of the inter vivos transfer as the case may be. The disclaimer is binding upon the disclaimant and all persons claiming through or under the disclaimant. Probate Code § 6205(B) provides that unless a testator or donor has provided for another disposition, the disclaimer shall, for purposes of determining the rights of other parties, be equivalent to the disclaimant's having died before the decedent in the case of a devolution by will or intestacy or before the effective date of an inter vivos transfer.

Son and Daughter do not currently serve on the Board of Directors of CF. It is represented that neither Son nor Daughter will become a member of the Board of Directors of CF in the future.

Decedent's estate, Son, and Daughter request the following rulings:

1. The proposed disclaimers by Son and Daughter of their unitrust interests in CRUT No. 1 will constitute qualified disclaimers under § 2518.

2. The value of the charitable remainder interest in CRUT No. 1 will qualify for the federal estate tax charitable deduction under § 2055.

3. The value of the unitrust interest in CRUT No. 1 will qualify for the federal estate tax marital deduction under § 2056(b)(8).

Ruling Request 1

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, then for purposes of the estate, gift, and generation-skipping transfer tax the disclaimed interest is treated as if it never passed to that person.

Section 2518(b) defines a qualified disclaimer as an irrevocable and unqualified refusal by a person to accept an interest in property but only if –

(1) the refusal 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 the date that is 9 months after the later of –

(A) the date on which the transfer creating the interest in the person is made, or
(B) the day on which the person attains age 21,

(3) the person 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 –

(A) to the spouse of the decedent, or
(B) to a person other than the person making the disclaimer.

Section 25.2518-1(b) of the Gift Tax Regulations provides that, if a person makes a qualified disclaimer, for purposes of the Federal estate, gift, and generation-skipping transfer tax provisions, the disclaimed interest in property is treated as if it had never been transferred to the disclaimant. Instead, it is considered as passing directly from the transferor of the property to the person entitled to receive the property as a result of the disclaimer. Accordingly, a disclaimant is not treated as making a gift.

Section 25.2518-2(c)(3)(i) provides that the 9-month period for making a disclaimer generally is to be determined with reference to the transfer creating the interest in the disclaimant. With respect to inter vivos transfers, a transfer creating an interest occurs when there is a completed gift for Federal gift tax purposes regardless of whether a gift tax is imposed on the completed gift.

Section 25.2518-2(d)(1) provides that a qualified disclaimant 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. Acceptance is manifested by an affirmative act that is consistent with ownership of the interest in property.

Section 25.2518-2(d)(2) provides that if a beneficiary who disclaims an interest in property is also a fiduciary, actions taken by the person in the exercise of fiduciary powers to preserve or maintain the disclaimed property are not treated as an acceptance of the property or its benefits. Thus, an executor who is also a beneficiary may direct the harvesting of a crop or the general maintenance of a home. However, a fiduciary 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 exercises or retains a discretionary power to allocate enjoyment of that interest among members of a designated class.

Section 25.2518-2(e)(1) provides that 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.

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, due to the decedent's right, exercisable 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.

In this case, Son and Daughter propose to disclaim their respective unitrust interests in CRUT No. 1. As discussed above, under the terms of CRUT, Decedent retained the right to revoke the successor unitrust interests of Son and Daughter until her death. Accordingly, the transfer of the unitrust interests of CRUT to Son and Daughter upon creation of CRUT constituted incomplete gifts for gift tax purposes that became complete on Decedent's death. See Rev. Rul. 79-243, 1979-2 C.B. 343. Accordingly, the 9-month period for making the disclaimers with respect to the unitrust interests of Son and Daughter commenced on Decedent's date of death.

As a result of the proposed disclaimers, Son and Daughter will be presumed under state law to have predeceased the creation of CRUT, with the effect that the CRUT No. 1 corpus will pass directly to SO upon Husband's death. Son and Daughter will also disclaim each of their successor powers to designate charitable remainder beneficiaries with respect to CRUT No. 1. Further, Son and Daughter will renounce any right that they would have as trustees to select the charitable remainder beneficiary of CRUT No. 1. Finally, Husband will renounce and release any and all right he has to designate the charitable beneficiary of CRUT No. 1 in a manner that would have the effect of granting to Son and/or Daughter, directly or indirectly, the right to direct the disposition of the CRUT No. 1 remainder.

Son and Daughter have not accepted any benefits with respect to their CRUT unitrust interests. Further, the amended SO trust agreement provides that any assets received by SO as a result of any qualified disclaimer by "Disclaiming Trustees" (which term includes Son and Daughter) are to be held exclusively by Special Trustees. Any Special Trustee is to be an individual who is not a Disclaiming Trustee or any "related or subordinate party" with respect to any Disclaiming Trustee as the quoted term is defined in § 672(c). Accordingly, based on the facts presented and the representations made, we conclude, that if the respective disclaimers are received by Decedent's personal representative not later than the date that is 9 months after Decedent's death, the disclaimers will be qualified disclaimers under § 2518.

Ruling Request 2 and 3

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 all bequests to or for the use of certain governmental entities, certain corporations organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, and certain other fraternal and veteran organizations.

Section 20.2055-2(c)(1)(i) of the Estate Tax Regulations provides 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 that falls into the bequest, devise, or transfer as a result of a qualified disclaimer.

Section 2055(e)(2)(A) provides that where an interest in property passes or has passed from the decedent to a person, or for a use, described in § 2055 (a), and an interest in the same property passes or has passed (for less than an adequate and full consideration in money or money's worth) from the decedent to a person, or for a use, not described in § 2055 (a), a deduction shall be allowed under this section for the interest which passes or has passed to the person, or for the use, described in § 2055 (a) if, 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 § 664) or a pooled income fund (described in § 642(c)(5)).

Section 20.2055-2(e)(1)(i) provides generally that where an interest in property passes or has passed from the decedent for charitable purposes and an interest in the same property passes or has passed from the decedent for private purposes, no deduction is allowed under § 2055 for the value of the charitable interest, unless the interest is a deductible interest described in § 20.2055-2(e)(2).

Section 20.2055-2(e)(2)(v) provides that a deductible interest is a charitable interest in property where the charitable interest is a remainder interest in a trust which is a charitable remainder unitrust, as defined in § 664(d)(2) and (3) and § 1.664-3 of the Income Tax Regulations. For these purposes, the charitable organization to or for the use of which the remainder interest passes must meet the requirements of both §§ 2055(a) and 664(d)(2)(C).

Section 2056(a) allows an estate tax deduction for the value of any interest in property that passes or has passed from a decedent to a surviving spouse, to the extent that the interest is included in the decedent's gross estate.

Section 2056(b)(1) provides that a deduction is not allowed under § 2056(a) 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 interest passing to the surviving spouse will terminate or fail, and (a) an interest in the property passes from the decedent to any person other than the surviving spouse (or the estate of such spouse), and (b) by reason of such passing the person (or his heirs or assigns) may possess or enjoy any part of the property after the termination or failure of the interest passing to the surviving spouse.

Section 2056(b)(8) provides generally that if the surviving spouse of the decedent is the only noncharitable beneficiary of a qualified charitable remainder trust (i.e., a trust described in § 664), § 2056(b)(1) will not apply to any interest in the trust which passes or has passed from the decedent to the surviving spouse. Section 20.2056(b)-8(a)(1) provides that if the surviving spouse is the only noncharitable beneficiary of a charitable remainder unitrust described in § 664, the value of the unitrust interest passing to the spouse qualifies for the marital deduction under §

2056(b)(8) and the value of the remainder interest qualifies for a charitable deduction under § 2055.

In the case at hand, after the division of CRUT into CRUT No. 1 and CRUT No. 2, the total unitrust to be paid annually will not change. Husband will receive the same amount from both CRUT No. 1 and CRUT No. 2 that he would have received absent the division of CRUT. Similarly, the interests of the charitable remainder beneficiaries will be identical before and after the division of CRUT. Accordingly, the division of CRUT into CRUT No. 1 and CRUT No. 2 will not cause CRUT No. 1 or CRUT No. 2 to fail to qualify as charitable remainder unitrusts under § 664.

As discussed above, as a result of the disclaimers by Son and Daughter, Son and Daughter will be deemed to have predeceased Decedent with respect to the disclaimed unitrust interest. Therefore, assuming the disclaimers executed by Son and Daughter are qualified disclaimers, under §§ 2046 and 2518, Husband will be the only noncharitable beneficiary of CRUT No. 1 for federal estate tax purposes. Accordingly, assuming the disclaimers executed by Son and Daughter are qualified disclaimers under §§ 2046 and 2518, and assuming CRUT No. 1 otherwise qualifies as a charitable remainder unitrust described in § 664, the value of the charitable remainder interest in CRUT No. 1 will qualify for the federal estate tax charitable deduction under § 2055, and the value of the unitrust interest in CRUT No. 1 passing to Husband will qualify for the federal estate tax marital deduction under § 2056(b)(8).

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 the rulings, it is subject to verification on examination.

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 Decedent's estate, Son, and Daughter.

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

Sincerely yours,
George L. Masnik
Chief, Branch 4
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure
Copy for section 6110 purposes