Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Person To Contact:
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Telephone Number:

Refer Reply To:
CC:PSI:B09 – PLR-127891-03

Date:
April 01, 2004

In Re:

Legend:

Trust	=
Decedent	=
Spouse	=
State	=
State Code	=
Foundation	=
Remainder Trust	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
a	=
b	=
c	=
d	=
e	=
f	=
g	=
h	=

Dear Sir:

This is in response to a letter dated April 24, 2003, and subsequent correspondence, requesting a ruling regarding the reformation of a testamentary trust under § 2055(e)(3) of the Internal Revenue Code.

On Date 1, Decedent executed a will that provided in Article Two that the residue of his estate was to be held in a charitable trust (Trust). Article Three of the will set forth Trust's terms in five paragraphs numbered A through E.

Paragraph A of Article Three provides that Trust's property is to he held for "scientific, recreation and educational purposes, for tours, soil and water protection, as an open space and for the growing of forest species indigenous to this region of Southwest [State]."

Paragraph B provides that the trustees are granted all of the powers set forth in State Code and that the trustees have the authority to appoint substitute or successor trustees in case of death, disability, or resignation.

Paragraph D provides that the trustees are to lease, without consideration, Decedent's personal residence and curtilage to Spouse for her lifetime and maintain the same. When Spouse dies the lease is to terminate.

Paragraph E provides that Spouse is to receive distributions of income and principal from Trust's marketable securities and cash, at least quarterly, to enable her to live according to her station in life and in the manner in which she had been accustomed. Upon Spouse's death, the funds are to remain in Trust.

On Date 2, approximately one month after executing his will, Decedent died and was survived by Spouse. The residue of Decedent's estate consisted of approximately $ a of marketable securities, cash, and personality; $ b, representing the value of Decedent's one-half interest in marketable securities and bank accounts that Decedent and Spouse held as joint tenants; and c acres of land on which three residential dwellings and three log cabins are situated. One of the residences is Decedent and Spouse's personal residence. It has been represented that this residence had a fair market value of approximately $ d as of Decedent's death and that $ e a year is required to maintain the residence.

On Date 3, Spouse disclaimed her survivorship interest in all but one of the joint accounts held by Decedent and Spouse as joint tenants and her right to receive distributions of principal from Trust's marketable securities and cash as provided under Article Three, Paragraph E of Decedent's will. As a result of the disclaimer, the estate's interest in marketable securities and cash increased to approximately $ f.

As drafted, Trust does not qualify for the federal estate tax charitable deduction under § 2055(a). In order to qualify Trust for the estate tax charitable deduction, on Date 4, the estate commenced a judicial proceeding to reform Trust under the provisions of State law and § 2055(e)(3). Under the proposed reformation, Trust's property is to be divided in the following manner: (1) with the exception of the personal residence and curtilage, Decedent's real property interests comprising approximately g acres are

transferred to a newly created private foundation (Foundation); (2) the personal residence and curtilage are removed from Trust; and (3) the marketable securities and cash are to fund a charitable remainder annuity trust (Remainder Trust).

With respect to Foundation, the governing terms of Foundation incorporate the requirements of § 508(e). On Date 5, the Service issued a determination letter to Foundation in which the Service concluded that Foundation is a private foundation within the meaning of §§ 501(c)(3) and § 509.

With respect to the personal residence and curtilage, Spouse will receive a legal life estate in both, and the remainder will pass to Foundation. Spouse and Foundation will receive their interests in the residence and curtilage under a recorded deed.

Finally, with respect to Remainder Trust, this trust will provide Spouse with an annuity amount equal to h percent of the initial net fair market value of the trust for her lifetime to be paid in equal quarterly installments. This annuity will replace Spouse's income interest in the marketable securities and cash as provided in Article Three, Paragraph E of Decedent's will and Spouse's right to $ e per year to maintain the personal residence. Upon Spouse's death, Remainder Trust's principal is to be distributed to Foundation. The terms of Remainder Trust incorporate the provisions of § 664(d)(1) and section 6 of Rev. Proc. 90-32.

It is represented that the reformations to Trust, as proposed, will be effective as of Decedent's date of death.

The estate has requested the following rulings:

1. The disclaimer filed by Spouse of her right to the survivorship interests in the joint accounts held by Spouse and Decedent and her right to receive discretionary distributions of principal from the assets described in Article Three, Paragraph E of Decedent's will is a qualified disclaimer under § 2518(b).

2. The proposed reformation of Trust will result in a qualified reformation under § 2055(e)(3).

3. A federal estate tax charitable deduction under § 2055(a) will be allowed for: (1) the present value of the remainder interest in Remainder Trust, as reformed; (2) the present value of the remainder interest in the personal residence; and (3) the value of the real property held by Foundation.

4. A federal estate tax marital deduction under § 2056(b)(8) will be allowed for the present value of Spouse's right to receive annuity payments from Remainder Trust, as reformed.

LAW AND ANALYSIS:

RULING 1:

Section 2046 provides that 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, 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) provides that a "qualified disclaimer" means 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.

Section 2518(c)(1) provides that a disclaimer of an undivided portion of an interest that meets the requirements of § 2518(b) is treated as a qualified disclaimer of such portion of the interest.

Section 25.2518-2(c)(4)(iii) of the Gift Tax Regulations provides that in the case of a transfer to a joint bank, brokerage, or other investment account (e.g., an account held at a mutual fund), if a transferor may unilaterally regain the transferor's own contributions to the account without the consent of the other cotenant, such that the transfer is not a completed gift under § 25.2511-1(h)(4), the transfer creating the survivor's interest in the decedent's share of the account occurs on the death of the deceased cotenant. Accordingly, if a surviving joint tenant desires to make a qualified disclaimer with respect to funds contributed by a deceased cotenant, the disclaimer must be made within 9 months of the cotenant's death. The surviving joint tenant may not disclaim any portion of the joint account attributable to consideration furnished by that surviving joint tenant.

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. 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 § 2518(b) are satisfied, A can make a qualified disclaimer of either the income interest or the remainder.

In the present case, Spouse disclaimed her survivorship interest in all but one of the joint accounts held by Decedent and Spouse as joint tenants. She also disclaimed her right, under Article Three, Paragraph E of Decedent's will, to receive distributions of principal from Trust's marketable securities and cash. The right to receive distributions of principal is a separate interest in property from the right to receive distributions of income that may be disclaimed. Section 25.2518-3(a)(1). Based upon the facts submitted and the representations made, Spouse's disclaimer satisfies the requirements of § 2518(b). Accordingly, we conclude that, based on the facts submitted and representations made, Spouse's disclaimer is a qualified disclaimer under § 2518.

RULINGS 2 and 3:

Section 170(f)(3)(A) provides that in the case of a contribution (not made by a transfer in trust) of an interest in property which consists of less than the taxpayer's entire interest in such property, an income tax charitable deduction shall be allowed only to the extent that the value of the interest contributed would be allowable as a deduction if such interest had been transferred in trust. Section 170(f)(3)(B) provides that § 170(f)(3)(A) shall not apply to a contribution of a remainder interest in a personal residence or farm.

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, 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)(A) provides that where an interest in property (other than an interest described in § 170(f)(3)(B)) passes or has passed from the decedent to a person, or for a use, described in § 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 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), no deduction shall be allowed under § 2055 for the interest that passes or has passed to the person, or for the use, described in § 2055(a) unless, 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 2055(e)(3)(A) provides, in general, that a deduction shall be allowed under § 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 the 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) terminated 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 the decedent's death.

Section 2055(e)(3)(C)(i) provides that the term "reformable interest" means any interest for which a deduction would be allowable under § 2055(a) at the time of the decedent's death but for § 2055(e)(2). Prior to the enactment of § 2055(e)(2), under § 20.2055-2(a) of the Estate Tax Regulations, if a trust was created or property was transferred for both a charitable and a private purpose, a deduction was allowed for the value of the charitable interest if the charitable interest was presently ascertainable, and hence severable from the noncharitable interest.

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 § 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) provides, however, that § 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— (I) if an estate tax return is required to be filed, the last date (including extensions) for filing such return, or (II) if no 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 2055(e)(3)(D) provides that the term "qualified interest" means an interest for which a deduction is allowable under § 2055(a).

Section 2055(e)(3)(E) provides that the deduction referred to in § 2055(e)(3)(A) shall not exceed the amount of the deduction which would have been allowable for the reformable interest but for § 2055(e)(2).

Section 20.2055-2(e)(1)(i) provides, in pertinent part, that where an interest in property passes or has passed from the decedent for charitable purposes and an interest (other than an interest that is extinguished upon the decedent’s death) in the same property

passes or has passed from the decedent for private purposes (for less than an adequate and full consideration in money or money's worth), no deduction is allowable under § 2055 for the value of the interest that passes or has passed for charitable purposes unless the interest in property is a deductible interest described in § 20.2055-2(e)(2).

Section 20.2055-2(e)(2)(ii) provides that a deductible interest is a charitable interest in property where the charitable interest is a remainder interest, not in trust, in a personal residence. Thus, for example, if the decedent devises to charity a remainder interest in a personal residence and bequeaths to his surviving spouse a life estate in such property, the value of the remainder interest is deductible under § 2055.

Rev. Rul. 76-357, 1976-2 C.B. 285, provides that no charitable deduction is allowable under § 2055 for the value of a remainder interest in a decedent's personal residence passing to charity, where the residence is to be held in trust until the death of a life tenant. The ruling indicates that, under the regulations, the statutory exception for remainder interests in personal residences is not applicable if the personal residence is placed in trust by the decedent.

In the present case, Article Three of Decedent's will created Trust for both charitable and private purposes. The private purposes are the provisions for Spouse: (1) a life estate in the personal residence and curtilage; (2) payments by the trustees for the maintenance of the personal residence and curtilage during Spouse's life; and (3) the right to distributions of income and principal from the marketable securities and cash held in trust pursuant to Article Three, Paragraph E of Decedent's will in order to enable her to live according to her station in life and in the manner to which she had become accustomed. As discussed above, Spouse made a qualified disclaimer of her right to receive distributions of principal from Trust.

The charitable interest in Trust, before reformation, is a reformable interest under § 2055(e)(3)(C)(i) because, at the date of the Decedent's death, the value of Spouse's life estate in the personal residence and curtilage, the amount of money needed to maintain the personal residence and curtilage during Spouse's life, and the amount of money necessary to enable Spouse to live according to her station in life and in the manner to which she had become accustomed could be determined and subtracted from the full value of Trust to arrive at the value of the charitable interest. Hence, the charitable interest is a reformable interest within the meaning of § 2055(e)(3)(C)(i).

Spouse's interests in Trust are not expressed in a specified dollar amount or a fixed percentage of the fair market value of the property. The estate, however, commenced a judicial proceeding to reform Trust before the 90th day after the last date (including extensions) for filing Decedent's estate tax return. Therefore, pursuant to § 2055(e)(3)(C)(iii), § 2055(e)(3)(C)(ii) does not apply.

Based upon the facts submitted and the representations made, Trust, as reformed, will meet the requirements of § 2055(e)(3)(D) and, therefore, will be a qualified interest. Remainder Trust will be a qualified interest because the trust will be a charitable remainder annuity trust. Remainder Trust will be funded with the assets provided for in Article Three, Paragraph E of Decedent's will. Spouse will receive an annuity amount equal to h percent of the initial net fair market value of Remainder Trust for her lifetime, to be paid in equal quarterly installments. At Spouse's death, the remainder of Remainder Trust will pass to Foundation. Moreover, Remainder Trust incorporates the provisions of § 664(d)(1) and qualifies as a charitable remainder annuity trust under that section. The terms of Remainder Trust also incorporate the provisions of section 6 of Rev. Proc. 90-32.

Foundation's and Spouse's interests in the personal residence and curtilage will be a qualified interest because, under the proposed reformation, a legal remainder interest, not in trust, in the personal residence will be conveyed for charitable purposes. An estate tax charitable deduction is allowed for a charitable remainder interest, not in trust, in a personal residence under § 2055(e)(2), which references § 170(f)(3)(B), and under § 20.2055-2(e)(2)(ii).

Decedent's real property interests contributed to Foundation are qualified interests because the Service has determined that Foundation is a private foundation within the meaning of §§ 501(c)(3) and 509.

The proposed reformation satisfies the requirements of § 2055(e)(3)(B) because the difference between the actuarial value of the qualified interests and the actuarial value of the reformable interest does not exceed 5 percent of the actuarial value of the reformable interest. Both before and after the proposed reformation, Spouse's interest will terminate at her death. It is represented that the proposed reformation will be effective as of the Decedent's date of death. Finally, the requirements of § 2055(e)(3)(E) are satisfied because, as a result of the reformation, the deduction referred to in § 2055(e)(3)(A) does not exceed the amount of the deduction that would have been allowable but for § 2055(e)(2).

Accordingly, based on the facts submitted and representations made, we conclude that, provided the proposed reformations are made and comply with State law, the proposed reformation of Trust will result in a qualified reformation under § 2055(e)(3).

Further, we conclude that, based on the facts submitted and representations made, and provided the proposed reformations are made and comply with State law, a federal estate tax charitable deduction under § 2055(a) will be allowed for: (1) the present value of the remainder interest in Remainder Trust, as reformed; (2) the present value of the remainder interest in the personal residence; and (3) the value of the real property funding Foundation.

Ruling 4:

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, subject to § 2056(d), if the surviving spouse of the decedent is the only noncharitable beneficiary of a charitable remainder annuity trust or a charitable remainder unitrust described in § 664 (qualified charitable remainder trust), § 2056(b)(1) does not apply to the interest in the trust that is transferred to the surviving spouse. Thus, the value of the annuity or unitrust interest passing to the spouse qualifies for a marital deduction under § 2056(b)(8) and the value of the remainder interest qualifies for a charitable deduction under § 2055. If an interest in property qualifies for a marital deduction under § 2056(b)(8), no election may be made with respect to the property under § 2056(b)(7). For purposes of this section, the term non-charitable beneficiary means any beneficiary of the qualified charitable remainder trust other than an organization described in §170(c).

In this case, Spouse is the only noncharitable beneficiary of Remainder Trust, as reformed. Accordingly, the value of the annuity interest in Remainder Trust, as reformed, passing to Spouse will qualify for the federal estate tax marital deduction under § 2056(b)(8).

These rulings are expressly contingent on the issuance of a court order authorizing the proposed.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, no opinion is expressed or implied regarding the value of Trust’s property for federal transfer tax purposes.

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

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to the taxpayer.

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.

Sincerely,

James F. Hogan
Acting Branch Chief, Branch 9
(Passthroughs and Special Industries)

Enclosure: Copy for § 6110 purposes
Copy of letter

cc: