DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

200447040

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

UICs: 2056.00-00
2056.12-00
2518.00-00
402.08-05
[redacted]

AUG 2 4 2004

SE:T:EP:RA:T3

LEGEND:

Decedent =

Spouse =

Daughter 1 =

Daughter 2 =

Grandchild 1 =

Grandchild 2 =

Sister-in-law =

Sister =

Nephew 1 =

Niece 1 =

Nephew 2 =

Niece 2 =

Nephew 3 =

Nephew 4 =

Nephew 5 =

Trustee =

Year 1 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Trust 1 =

Trust 2 =

State =

County =

State Statute 1 =

State Statute 2 =

State Statute 3 =

State Statute 4 =

State Statute 5 =

Dear :

This is in response to the , request for letter rulings under sections 2056, 2518, 402 and 457 of the Internal Revenue Code ("Code"). The following facts and representations support your ruling request.

Decedent died on Date 4, survived by his spouse (Spouse), two children (Daughter 1 and Daughter 2), two grandchildren (Grandchild 1 and Grandchild 2), a sister (Sister) , and a sister-in-law (Sister-in-law). In addition, Sister had two children, Nephew 1 and Niece 1, and Sister-in-law had five children, Nephews 2-5 and Niece 2. Sister died seven days after Decedent.

Decedent's date of birth was Date 3. Thus, Decedent had not attained age 70 ½ as of his date of death, and would not have attained age 70 1/2 as of the date of this ruling request.

Decedent had been employed by State from Year 1 until his death. Decedent was a participant in State's SERS (Salaried Employees Retirement System). It is represented that SERS is a qualified defined benefit plan under section 401 of the Internal Revenue Code, and is a

governmental plan within the meaning of Code § 414(d). Decedent also participated in State's Deferred Compensation Plan (DCP). It is represented that DCP is an eligible deferred compensation plan as defined in section 457(b) of the Internal Revenue Code.

Under the terms of both SERS and DCP, upon a participant's death, the plan proceeds become payable to the participant's designated beneficiary. However, under the terms of both plans, and consistent with State law, if the participant does not have a valid beneficiary designation in effect at the time of death, the proceeds are paid to the participant's estate.

Decedent had designated Trust 1, an inter vivos trust established by Decedent, as the beneficiary of Decedent's interests in SERS and DCP. However, on Date 2, Decedent established Trust 2, a revocable trust, and executed a new Last Will and Testament. At the same time, Decedent destroyed the Trust 1 agreement and his prior will, thereby revoking both instruments.

After revoking Trust 1, Decedent failed to designate a new beneficiary of Decedent's interests in SERS and DCP. Consequently, at the time of Decedent's death there was no valid beneficiary designation in effect with respect to Decedent's interests in SERS and DCP. Accordingly, the proceeds from each plan became payable to Decedent's estate.

Article Four of Decedent's will provides that the residue of Decedent's estate is to pass to Trust 2.

Upon Decedent's death, Trust 2 is to be divided into Trust A and Trust B, both of which are intended to provide for Spouse's needs during her lifetime.

Article 1(A)(1) of Trust A provides that if Decedent's Spouse survives Decedent or is presumed to have survived him, Trust A is to be established. Trust A is to be funded with a share of Decedent's estate that is determined by a fraction. The numerator of the fraction is the amount that, if deductible as a marital deduction, will produce a federal taxable estate of a value that, after allowing for the available unified credit and the credit for state death taxes other than those imposed solely for the purpose of obtaining the unified credit allowed under section 2011 will result in no federal estate tax being imposed on Decedent's estate. The denominator of the fraction is the value of the trust estate. The fractional share is to be determined on the basis of the amounts finally determined for federal estate tax purposes. The fractional share is to contain only assets that qualify for the marital deduction and assets, to the extent possible, upon which there is available no foreign tax credit. The fractional share is to be undiminished by any estate, inheritance or other death taxes.

Article 1(A)(2) provides that Trust A is to be held for the benefit of Spouse. Trustee is to pay Spouse, or expend for her benefit, all of the net income received after the Decedent's date of death in quarter-annual installments or more frequent installments for Spouse's life. In addition,

Trustee is to pay such amounts of principal from Trust A to Spouse as she may request, up to and including the whole thereof, or in the event that Spouse is incapacitated and unable to make the request, Trustees may expend such amounts from principal of Trust A as it may deem, in their discretion, necessary for Spouse's health, comfort, welfare, maintenance and support.

Under Article 1(A)(3), on the death of Spouse, Trustee is to distribute the principal of Trust A to Trust B.

Article 1(B) provides that, Trust B, to be established upon Decedent's death, is to be comprised of the fractional part of the trust estate remaining after the establishment of Trust A. The net income of Trust B is to be paid to or for the benefit of Spouse in quarter annual or more frequent installments for Spouse's life. In addition, Trustee may pay to Spouse, or expend for her benefit as much of the principal of Trust B as Trustee in its sole discretion, may deem necessary for Spouse's health, maintenance and support.

Upon Spouse's death the property of Trust B is to pass to Decedent's then living issue, per stirpes. The share of any daughter who is then deceased will be distributable to the deceased daughter's then living issue, per stirpes, or if she has no then living issue, to the Decedent's other living issue in the same manner. If the Decedent has no then living issue, the remaining trust property will be distributable one-half to Sister-in-law, or if she is not then living to Sister-in-law's then-living issue per stirpes, and one-half to Sister, or if she is not then living to Sister's then-living issue per stirpes.

It is proposed that, Spouse, Child 1, Child 2, Grandchild 1, Grandchild 2, Sister (through her legal representative), Sister-in-law, Nephew 1 and Niece 1, Nephews 2-5 and Niece 2 will disclaim their respective interests under Trust 2. In addition, it is represented that in the case of three beneficiaries who are minors, a guardian will be appointed for purposes of executing their disclaimers.

Under State law, as a result of the disclaimers by all the beneficiaries of Trust 2, the disclaimants will be treated as if they had all predeceased Decedent. Accordingly, the estate residue (which includes the proceeds of SERS and DCP), after the payment of debts and expenses, will become distributable to Decedent's heirs determined under State law.

It is further proposed that Child 1, Child 2, Grandchild 1 and Grandchild 2 will disclaim each of their intestate interests in the residue of Decedent's estate. These disclaimants will also be treated as predeceasing the Decedent with respect to the disposition of the residue. Under State Statute 1, if a decedent dies intestate survived by a spouse, with no surviving issue or parents, the spouse will receive the decedent's entire estate. Accordingly, Spouse will become the sole beneficiary of Decedent's residuary estate, including the interests in SERS and DCP benefits.

It is represented that at the time of his death, Decedent was a resident of County, and that Decedent's will has been probated before the Register of Wills of County in accordance with State law.

It is represented that the proposed disclaimers will be in writing. It is represented that the disclaimers of the beneficiaries of Trust 2 will be filed with Decedent's executor and the trustees of Trust 2, and that the disclaimers of the intestate interests will be filed with Decedent's executor and the County Register of Wills within nine months of the Decedent's date of death to be approved by the appropriate County Court.

It is represented that none of the disclaimants will have accepted any of the income or other benefits of the disclaimed property prior to making the disclaimers.

Upon the approval of the disclaimers and the filing of the disclaimers with the County Register of Wills, the residue of Decedent's estate, including the distributions from SERS and the DCP, will pass to Spouse by operation of State law. Within 60 days of receipt of the distributions from SERS and the DCP, Spouse will roll over said distributions into an individual retirement account (IRA) set up and maintained in her name. Said distributions and rollovers will occur no later than December 31,

Based on the above facts and representations, the following rulings are requested:

1. The proposed disclaimers will be qualified disclaimers for purposes of section 2518;

2. The amount passing to Spouse by intestacy as a result of the disclaimers will be treated as passing directly from Decedent to Spouse, and will qualify for the estate tax marital deduction;

3. As a result of the disclaimers referenced herein, Spouse will be treated as having received Decedent's interest in State's SERS directly from Decedent for purposes of Code § 402(c);

4. As a result of the disclaimers referenced herein, Spouse will be treated as having received Decedent's interest in State's DCP directly from the Decedent for purposes of Code § 457(e)(16);

5. Pursuant to Code § 402(c), Spouse is eligible to roll over a distribution of Decedent's interest in SERS into an individual retirement account (IRA) set up and maintained in the name of Spouse;

6. Pursuant to Code § 457(e), Spouse is eligible to roll over a distribution of Decedent's interest in DCP into an individual retirement account (IRA)

set up and maintained in the name of Spouse; and

7. Spouse will not have to include in her Federal gross income for the year of distribution and rollover (2004) any portion of the distribution from either SERS and/or DCP timely rolled over into an IRA set up and maintained in the name of Spouse.

With respect to your first and second ruling requests, Code section 2001(a) imposes a tax on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

Section 2056(a) provides that, for purposes of the tax imposed by ' 2001, the value of the taxable estate is to be determined by deducting from the value of the gross estate an amount equal to the value of any interest in property that passes or has passed from the decedent to the surviving spouse.

Under § 20.2056(d)-2 of the Estate Tax Regulations, if an interest in property passes from a decedent to a person other than the surviving spouse, the person makes a qualified disclaimer with respect to such interest, and as a result of the disclaimer, the property passes to the surviving spouse, then the disclaimed interest is treated as passing directly to the surviving spouse from the decedent, for purposes of section 2056.

Under section 2046(a), provisions relating to the effect of a qualified disclaimer for purposes of the estate tax chapter are found in section 2518.

Section 2518(a) provides that, if a person makes a qualified disclaimer with respect to any interest in property, the disclaimed interest will be treated for gift, estate, and generation-skipping transfer tax purposes as if the interest had never been transferred to such person.

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 disclaimer is received by the transferor of the interest or his legal representative no later that 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 25.2518-2(e)(1) provides that, in general, 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. See § 25.2518-2(e)(5), Examples 1, 2, and 3 regarding the application of this rule in the case of the disclaimer of an interest received under a will by a person who is also an heir at law. Section 25.2518-2(e)(2) provides that in the case of a disclaimer made by a decedent's surviving spouse, with respect to property transferred by the decedent, the disclaimer satisfies the requirements of § 2518(b)(4) if the interest passes as a result of the disclaimer without direction on the part of the surviving spouse to the surviving spouse or another person.

State Statute 2 provides that a person to whom an interest in property would have devolved by whatever means, including, a beneficiary under a will, a person entitled to take by intestacy, and a beneficiary of policies and pension, profit-sharing and other employee benefit plans, may disclaim the interest in whole or in part by a written disclaimer. The disclaimer must: describe the interest disclaimed; declare the disclaimer and extent thereof; and be signed by the disclaimant.

State Statute 3 provides, in part, that a disclaimer on behalf of a decedent, a minor or an incapacitated person may be made by his personal representative, or the guardian of his estate.

State Statute 4 provides that if the decedent died domiciled in State, and an interest would have devolved to the disclaimant by will or by intestacy, the disclaimer shall be filed with the clerk of the orphan's court division of the county where the decedent died domiciled and a copy of the disclaimer is to be delivered to any personal representative, trustee or other fiduciary in possession of the property.

State Statute 5 provides generally that a disclaimer relates back to the date of death of the decedent. Unless a testator or donor has provided for another disposition, the disclaimer, for purposes of determining the rights of other parties, is treated as the equivalent to the disclaimant having died before the decedent in the case of a disposition by will or intestacy.

Ruling 1.

In the present case, the estate residue (which includes Decedent's interest in SERS and DCP) will pass, under Decedent's will to Trust 2. All primary and contingent beneficiaries of Trust 2 (or their legal representatives or guardians), that is, Spouse, Child 1, Child 2, Grandchild 1, Grandchild 2, Sister (through her legal representative), Sister-in-law, Nephew 1 and Niece 1, and Sister-in-law, Nephews 2-5, and Niece 2 will disclaim their interests in Trust 2. As a result of these disclaimers, the estate residue, rather than passing to Trust 2, passes to Decedent's heirs

at law determined under State law; that is, Spouse, Child 1, Child 2, Grandchild 1, and Grandchild 2.

Child 1, Child 2, Grandchild 1, and Grandchild 2 will disclaim their interests as heirs at law in the estate residue. Accordingly, under State law, the entire estate residue will pass to Spouse. Thus, as a result of the disclaimers, the disclaimed interests will pass, without any direction on the part of the disclaimants to Decedent's surviving spouse, satisfying the requirements of §2518(b)(4) and §§25.2518-2(e)(1) and (2). It is represented that the disclaimers will be valid under State law, and will be delivered to the appropriate parties no later than 9 months after Decedent's death. Further, it is represented that the disclaimants have not accepted any benefits from the interests subject to the disclaimers.

Based on the above, we conclude that the proposed disclaimers by the Trust 2 beneficiaries of their respective interests in Trust 2 will be qualified disclaimers under §2518. In addition, we conclude that the disclaimers to be executed by Child 1, Child 2, Grandchild 1, and Grandchild 2 with respect to their interests as heirs at law in the estate residue, will be qualified disclaimers under §2518.

Ruling 2

As discussed above, as a result of the disclaimers, Spouse will be entitled to receive the estate residue, which includes Decedent's interests in SERS and DCP. Further, we have concluded that the disclaimers will be qualified disclaimers under §2518, assuming the requirements of §2518(b) are otherwise satisfied. Accordingly, under §20.2056(d)-2(b), the estate residue is treated as passing from the Decedent to Spouse for purposes of §2056. Therefore, an estate tax marital deduction will be allowed under §2056 for the value of the residue passing to Spouse.

With respect to your third, fifth and seventh (to the extent the seventh applies to State's SERS) ruling requests, section 402(c)(1) of the Code provides, generally, that if any portion of an eligible rollover distribution from a section 401(a) of the Code qualified retirement plan is transferred into an eligible retirement plan, the portion of the distribution so transferred shall not be includible in gross income in the taxable year in which paid.

Section 402(c)(2) of the Code provides that the maximum amount of an eligible rollover distribution to which paragraph (1) applies shall not exceed the portion of such distribution which is includible in gross income (determined without regard to paragraph (1)) but states that this maximum limitation does not apply to a distribution transferred to an eligible retirement plan described in clause (i) or (ii) of section 402(c)(8)(B).

Section 402(c)(4) of the Code defines "eligible rollover distribution" as any distribution to an employee of all or any portion of the balance to the credit of an employee in a qualified trust except the following distributions:

(A) any distribution which is one of a series of substantially equal periodic payments (not less frequently than human annually) made --

(i) for the life (or life expectancy) of the employee or the joint lives (or joint life expectancies) of the employee and the employee's designated beneficiary, or

(ii) for a specified period of 10 years or more,

(B) any distribution to the extent the distribution is required under section 401(a)(9), and

(C) any distribution which is made upon the hardship of the employee.

Section 402(c)(8)(B) of the Code defines eligible retirement plan as (i) an individual retirement account described in section 408(a), (ii) an individual retirement annuity described in section 408(b) (other than an endowment contract), (iii) a section 401(a) of the Code qualified retirement plan, (iv) an annuity plan described in section 403(a), (v) an eligible deferred compensation plan described in section 457(b) which is maintained by an eligible employer described in section 457(e)(1)(A), and (vi) an annuity contract described in section 403(b).

Section 402(c)(3)(A) of the Code provides, generally, that, except as provided in subparagraph (B), section 402(c)(1) shall not apply to any transfer of a distribution made after the 60th day following the day on which the distributee received the property distributed.

Section 1.402(c)-2, Question and Answer 11, of the Income Tax Regulations states that if an eligible rollover distribution is paid to an employee and the employee contributes all or part of the eligible rollover distribution to an eligible retirement plan no later than the 60th day following the date the employee received the distribution, the amount contributed is not currently includible in gross income.

Section 402(c)(9) of the Code provides, generally, if a distribution attributable to an employee is paid to the spouse of the employee after the employee's death, section 402(c) of the Code will apply to such distribution in the same manner as if the spouse were the employee.

Section 1.402(c)-2 of the regulations, Q&A 12, provides, generally, that if a distribution attributable to an employee is paid to the employee's surviving spouse, section 402(c) applies to the distribution in the same manner as if the spouse were the employee. Thus, a distribution to the surviving spouse of an employee is an eligible rollover distribution if it meets the applicable requirements of section 402(c)(2) and (4) and the associated regulations.

Section 1.402(c)-2 of the regulations, Q&A 7(b) provides that any amount that is paid before January 1 of the year in which the employee attains (or would have attained) age 70 ½ will not be treated as required under section 401(a)(9) and thus is an eligible rollover distribution if it otherwise qualifies.

Rulings 3, 5 and 7 (in part):

With respect to your third, fifth and seventh (in part) ruling requests, as indicated above, after the disclaimers referenced herein, Decedent's interest in State's SERS will pass to Spouse. Furthermore, as a result of the disclaimers, each disclaimant will be treated as having predeceased Decedent. Thus, the disclaimed property, including Decedent's interests in SERS, will not be treated as having passed to the disclaimants prior to passing to Spouse. To the contrary, the disclaimed property will be treated as having passed directly from the Decedent to Spouse. Said treatment will apply for purposes of Code section 402.

Thus, will respect to your third, fifth and seventh (in part) ruling requests, we conclude as follows:

3. As a result of the disclaimers referenced herein, Spouse will be treated as having received Decedent's interest in State's SERS directly from Decedent for purposes of Code § 402(c);

5. Pursuant to Code § 402(c), Spouse is eligible to roll over a distribution of Decedent's interest in State's SERS into an individual retirement account (IRA) set up and maintained in the name of Spouse; and

7. Spouse will not have to include in her Federal gross income for the year of distribution and rollover (2004) any portion of the distribution from State's SERS timely rolled over into an IRA set up and maintained in the name of Spouse.

This ruling letter is based on the assumption that State SERS is qualified within the meaning of Code § 401(a) and is a qualified governmental plan within the meaning of Code § 414(d) as represented. It also assumes that the IRA to be set up and maintained in the name of Spouse will meet the requirements of Code section 408(a) as represented. Additionally, it assumes the correctness of all facts and representations made with respect thereto.

Please note that, pursuant to an August 17, 2004 request submitted by your authorized representative on your behalf, the Service's responses to your fourth, sixth and seventh (to the extent the seventh applies to State's DCP) ruling requests, will be issued to you in a separate ruling letter.

A copy of this letter has been sent to your authorized representatives in accordance with a power of attorney on file in this office.

If you have any questions concerning this letter ruling, please contact , Esquire (I.D. -) at 202- (Phone) or 202 (FAX).

Sincerely yours,

Frances V. Sloan

Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted copy of letter ruling
Form 437