

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:4 - PLR-112525-00
Date: August 11, 2000

Re:

LEGEND:

Decedent =

Spouse =

Son =

Daughter =

State =

Date 1 =

Date 2 =

Company =

\$x =

\$y =

Trust =

Dear :

This is in response to your authorized representative's letter dated June 22, 2000 requesting a ruling concerning the validity and effect of a proposed disclaimer that is intended to qualify under section 2518 of the Internal Revenue Code.

The facts and representations submitted are summarized as follows: Decedent died on Date 2, a resident of State. Decedent executed his will on Date 1. Decedent was survived by Spouse, Daughter, and Son.

Item III(b)(4) of Decedent's will establishes Trust as follows:

Unto my Trustee as hereinafter designated, I leave my remaining stocks, bonds and marketable securities, as Trustee, in trust, for the benefit of my wife [Spouse] during her natural lifetime and direct that my Trustee pay over to, or apply to the benefit of, my wife all of the net income of this trust in quarterly payments or at more frequent intervals as may be directed by my said wife and my Trustee may, at any time and from time to time, pay to, or apply for the benefit of my said wife, so much or all of the principal of this trust as my Trustee, in its sole and absolute discretion, deems necessary or desirable, for the support, maintenance, health, comfort and general welfare of my wife...In the event that my wife shall not survive me, or in the event she shall survive me and upon her subsequent death, the principal and accrued but undistributed income passing hereunder, if any shall remain, shall be paid over and distributed to [Daughter] and [Son] in equal shares, free and discharged of the trust herein, children of a deceased beneficiary taking their parent's representative share.

Prior to his death, Decedent established a brokerage account with Company. At that time Decedent signed a "Cash & Margin Agreement" with Company which provides, in part, as follows:

All monies, securities or other property which [Company] may at any time be carrying for me or for any account in which I have an interest or which may at any time be in [Company's] possession for any purpose, including safekeeping, shall be subject to a general lien for the discharge of all my obligations to [Company], irrespective of whether or not [Company] has made advances in connection with such securities or other property and irrespective of the number of accounts I may have with [Company].

At the time of Decedent's death, the value of the securities in Decedent's Company account was \$x. At the time of Decedent's death, Decedent's margin account with Company had a balance of \$y. Since Date 2, Decedent's personal representative has sold some securities from the brokerage account to reduce the balance of the margin account. It is anticipated that securities of a sufficient amount will be sold, prior to the distribution of the securities to the appropriate beneficiaries of Decedent's estate, in order to reduce the margin account balance to zero.

Spouse proposes to make a disclaimer that is intended to be a qualified disclaimer within the meaning of § 2518(b) of the Internal Revenue Code. The disclaimer will be made prior to the end of the 9-month period following Date 2. The proposed disclaimer provides that the property to which the disclaimer applies is:

The disclaimant's interest (together with income attributable thereto) in two-thirds (2/3) of the trust set forth in Item III(b)(4) of the Last Will and Testament of [Decedent].

As a result of the disclaimer the disclaimed property will be removed from the trust and will pass, according to the applicable provisions of State law and the terms of Trust, to Daughter and Son in equal shares and without any direction by Spouse.

It is represented that Spouse, the disclaimant, has not accepted or received any interest or benefits from Trust.

The following ruling is requested:

The disclaimer by Spouse of 2/3 of Spouse's interest in Trust as described above will be a qualified disclaimer within the meaning of § 2518.

Section 2001 imposes a tax on the taxable estate of every decedent who is a citizen or resident of the United States.

Under § 2046 of the Internal Revenue Code, provisions relating to the effect of a qualified disclaimer for purposes of the estate tax are found in § 2518.

Section 2518(a) provides that for purposes of the estate, gift and generation-skipping transfer (GST) taxes, if a person makes a qualified disclaimer with respect to any interest in property, the estate, gift, and GST tax shall apply with respect to such interest 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) such refusal is in writing,
- 2) such writing is received by the transferor of the interest or his legal representative no 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 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 to the decedent's spouse or 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 as described in § 2518(b) and § 25.2518-2, 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 person making the qualified disclaimer. 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 person making a qualified disclaimer is not treated as making a gift. Similarly, the value of a decedent's gross estate for purposes of the Federal estate tax does not include the value of property with respect to which the decedent, or the decedent's executor or administrator on behalf of the decedent, has made a qualified disclaimer.

Section 25.2518-3(a)(1)(i) provides that 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.

Section 25.2518-3(a)(1)(ii) provides that a disclaimant shall be treated as making a qualified disclaimer of a separate interest in property if the disclaimer relates to severable property and the disclaimant makes a disclaimer which would be a qualified disclaimer if such property were the only property in which the disclaimant had an interest.

Under § 25.2518-3(a)(2), a disclaimer is not a qualified disclaimer if the beneficiary disclaims income derived from specific property transferred in trust while continuing to accept income derived from the remaining properties in the same trust unless the disclaimer results in such property being removed from the trust and passing, without any direction on the part of the disclaimant, to persons other than the disclaimant or to the spouse of the decedent.

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.

In § 25.2518-3(d), Example (5), E died on September 13, 1978. Under the provisions of E's will, E's shares of stock in X, Y, and Z corporations were to be transferred to a trust. The trust provides that all income is to be distributed currently to F and G in equal parts until F attains the age of 45 years. At that time, the corpus of the trust is to be divided equally between F and G. F disclaimed both the income interest and the remainder interest in the shares of X stock. G disclaimed 20 percent of G's interest in the trust. F's disclaimer is not a qualified disclaimer because the X stock remains in the trust. If the remaining requirements of section 2518(b) are met, G's disclaimer is a qualified disclaimer.

Under State Code § 62-2-801(a), if a person, as a disclaimant, makes a disclaimer as defined in § 12-16-1910 with respect to any transferor's transfer to him of any interest in, including any power with respect to, property, or any undivided portion thereof, the interest, or such portion, is considered never to have been transferred to the disclaimant.

Section 62-2-801(d) provides that unless the transferor has provided otherwise in the event of a disclaimer, the disclaimed interest shall be transferred (or fail to be transferred as the case may be) as if the disclaimant had predeceased the date of effectiveness of the transfer of the interest; the disclaimer shall relate back to the date of effectiveness for all purposes; and any future interest which is provided to take effect in possession or enjoyment after the termination of the disclaimed interest shall take effect as if the disclaimant had predeceased the date on which he or she as the taker of the disclaimed interest became finally ascertained and the disclaimed interest became indefeasibly vested.

In the present case, similar to "G" in Example (5) described above, Spouse proposes to execute a disclaimer of an undivided portion of Spouse's interest in Trust. The disclaimer is described in terms of a fractional portion of Spouse's entire interest in Trust, together with the income attributable to said amount of property. The disclaimed property (and any income attributable to the disclaimed amount) will be segregated from the portion of the Trust that is not disclaimed. The disclaimed portion of the Trust will pass without direction on the part of Spouse, pursuant to the terms of the Decedent's will, "in equal shares, free and discharged of the trust herein" to Son and Daughter.

It is represented that Spouse has not accepted any income or other benefit of the disclaimed amount prior to and will not accept any income or benefit of the disclaimed amount subsequent to the disclaimer.

Based on the facts submitted and the representations made, we conclude that if the disclaimer is executed as proposed, Spouse's disclaimer of a portion of Trust property described as two-thirds (2/3) of Spouse's interest in Trust, together with the income attributable to the disclaimed amount will be a qualified disclaimer under § 2518(b).

Except as ruled above, we express or imply no opinion concerning the federal tax consequences of this transaction under the cited provisions of the Code or any other provision of the Code.

In accordance with a power of attorney on file with this office, we are sending a copy of this letter to your authorized representative. A copy of this letter should be attached to Decedent's federal estate tax return when it is filed.

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,
Associate Chief Counsel
(Passthroughs and Special Industries)
By Katherine A. Mellody
Senior Technician Reviewer
Branch 4

Enclosure

Copy of letter for section 6110 purposes

cc: