

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:4\PLR-100849-02

Date:

March 18, 2002

Re:

Legend:

- Decedent =
- B =
- S =
- Grandson 1 =
- Grandson 2 =
- Testator =
- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
- Date 5 =
- Date 6 =
- Date 7 =
- Date 8 =
- Company 1 =
- Company 2 =
- State 1 =
- State 2 =
- k =
- Trust =
- State 2 Statute 1 =
- State 2 Statute 2 =
- Bank =
- \$w =

Dear :

This letter is in reply to your authorized representative's letter, dated December

20, 2001, requesting rulings concerning a proposed disclaimer of an interest in Trust.

According to the facts submitted, Testator died on Date 1. Testator's Last Will and Testament was executed on Date 2, and a codicil thereto was executed on Date 3. Article Third of Testator's will provides, in part, as follows:

My stock in Company 1, a State 1 corporation, I give and bequeath to my sons, Decedent and B [Decedent's brother], in trust, however, for the following purposes:

(a) To transfer the stock into their names as trustees, to hold and vote the same, and to receive dividends thereon; with full power to sell or exchange all of the holdings whenever in the discretion of my trustees it may seem wise to do so.

(b) To distribute, as and when received, all cash dividends and proceeds of all sales, share and share alike, among [S, Decedent's sister], [B], and [Decedent], the issue of any one of the three who shall have died before the distribution to take his or her parent's share.

(c) The trust shall continue during the life of my sons and the survivor of them, provided, however, that the trust may be discontinued at any time after my death, whenever, in the discretion of my trustees, it may seem wise to do so. On the termination of the trust I direct that so much of the stock as remains in the hands of my trustees be equally divided among my children who may be living at the time or who have at the time died leaving issue, the issue of each deceased child to take their parent's share.

(d) I direct that any stock dividends that may be paid on the said stock shall be considered as part of the principal and retained by my trustees as such.

At the time of Testator's death on Date 1, Testator was survived by Decedent, B, and S. Decedent and B both qualified as trustees of Trust under Article Third of Testator's will.

S died on Date 4. S was survived by S's four children. However, three of S's four children died prior to Decedent's death. B died on Date 5 survived by four children. After the death of B, Decedent became the sole trustee of Trust until Decedent's death on Date 6. Upon Decedent's death, Bank became the trustee of Trust. Decedent was survived by two children, Grandson 1 and Grandson 2.

Trust was initially funded with all of the stock in Company 1 that Testator owned at the time of this death. On Date 7, Company 1 merged with Company 2. In exchange for the Company 1 stock that was owned by Trust, Trust received k shares of Company 2 stock. On Date 6, the date of Decedent's death, Trust held Company 2 stock as well as stock in several other corporations. At that time, the value of Trust's assets was \$w.

Trust has been making regular distributions of interest and cash dividends to the beneficiaries of Trust. However, whenever Trust has received any stock dividends or shares received in a stock for stock exchange, such new stock has been added to the principal of Trust and retained by Trust, pursuant to Trust's terms.

Under Article Third, paragraph (c) of Testator's will, during the lifetimes of the trustees of Trust (Testator's sons, Decedent and B) in the trustees discretion Trust could have been terminated and the assets of Trust distributed equally among the then living children of Testator and the surviving issue of any deceased child of Testator. Thus, while Decedent was serving as sole trustee of Trust, he possessed the power to terminate Trust and vest one-third of the Trust property in himself, free of trust. Decedent did not exercise this power during the entire period that he served as sole trustee of Trust.

Since Date 6, the date of Decedent's death, it is represented that no distributions of interest or principal have been made from Trust to or for the benefit of Grandson 1 and Grandson 1 has not accepted any benefits from Trust.

Upon termination of Trust, pursuant to Trust's terms, one-sixth of the Trust property will pass to Grandson 1. Grandson 1 proposes to disclaim a specified number of shares of each corporation's stock that is held by Trust and that comprises one-half of Grandson 1's one-sixth interest in Trust. The proposed disclaimer will be in writing and will meet the applicable requirements under State 2 law. The disclaimer will be filed on or before the date that is nine months after the date of Decedent's death. As a result of the disclaimer, the disclaimed property will pass, without any direction on the part of Grandson 1, to Grandson 1's issue.

The following rulings are requested.

1. Decedent had a general power of appointment created before October 21, 1942, over a one-third interest in the entire corpus of Trust.
2. The proposed disclaimer of a portion of the interest Grandson 1 would otherwise receive from Trust, will be considered a qualified disclaimer under § 2518 of the Internal Revenue Code.

Ruling 1.

Section 2041(a)(1) provides that the value of the gross estate shall include the value of all property to the extent of any property with respect to which a general power of appointment created on or before October 21, 1942, is exercised by the decedent by will, or by a disposition which is of such a nature that if it were a transfer of property owned by the decedent, such property would be includible in the decedent's gross estate under § 2035 to § 2038. The section further provides that the failure to exercise such a power or the complete release of such a power will not be deemed an exercise thereof.

Under § 20.2041-1(e) of the Estate Tax Regulations, a power of appointment created by will is, in general, considered created on the date of the testator's death.

Section 2041(b)(1) provides that the term "general power of appointment" means a power that is exercisable in favor of the decedent, the decedent's estate, the decedent's creditors, or the creditors of the decedent's estate.

In § 20.2041-2(c), Example (3), S created a trust in 1940 to pay the income to A for life, remainder as A appoints by an instrument filed with the trustee during A's lifetime. A exercised the power in 1955, five years before his death, reserving the right of revocation. The exercise, if not revoked before death, will cause the property subject to the power to be included in A's gross estate under § 2041(a)(1), since such a disposition if it were a transfer of property owned by A would cause the property to be included in his gross estate under § 2038. However, if the exercise were completely revoked, so that A died still possessed of the power, the property would not be included in A's gross estate for the reason that the power will not be treated as having been exercised.

In the present case, Testator, died on Date 1, a date before October 21, 1942. Testator created Trust under Article Third of his will. Under the terms of Trust, the trustees are to distribute, when received, all cash dividends and proceeds of all sales, equally among Testator's three children (S, Decedent's sister; B, Decedent's brother; and, Decedent). The issue of any one of the three beneficiaries who died before the distribution are to take his or her parent's share. During the lifetimes of the trustees of Trust (Testator's two sons, Decedent and B) the trustees in their discretion had the power to terminate Trust and cause the assets of Trust to be distributed equally among the then living children of Testator and the surviving issue of any deceased child of Testator. Thus, upon B's death, when Decedent became the sole trustee of Trust, he possessed the power to terminate the Trust and to vest one-third of the Trust property in himself, free of trust. Decedent did not exercise this power during his lifetime, and the power lapsed upon his death.

Under § 20.2041-1(e), a power of appointment created by will is considered created on the date of the testator's death. In this case, Decedent's power of appointment was created before October 21, 1942. The power to vest one-third of the Trust property in himself is a general power of appointment because the power was exercisable in favor of Decedent, Decedent's estate, Decedent's creditors, or the creditors of Decedent's estate. Accordingly, we conclude that Decedent had a general power of appointment created before October 21, 1942, over a one-third interest in the entire corpus of Trust that was not exercised and lapsed upon his death. Therefore, Decedent's one-third interest in Trust is not includible in Decedent's gross estate.

Ruling 2.

State 2 Statute 1 provides that any person who is a devisee or a beneficiary under a testamentary instrument, or appointee under a power of appointment exercised

by a testamentary instrument, including a person succeeding to a disclaimed interest, or an heir may disclaim in whole or in part the right of succession to any property or interest therein, including a future interest, by filing a disclaimer. Such a disclaimer may be of a fractional share, expressed as either a percentage or dollar amount, or any limited interest or estate.

State 2 Statute 2 provides that the time for filing a disclaimer is as follows:

- a. The instrument disclaiming a present interest shall be filed not later than 9 months after the death of the decedent or the donee of the power;
- b. The instrument disclaiming a future interest shall be filed not later than 9 months after the happening of the event which determines the taker's right to possession, use or enjoyment of the property interest;
- c. The time within which a disclaimer shall be filed may be extended by the court for reasonable cause, and on notice to the persons and in a manner as the court may direct.

Under section 2046(a), provisions relating to the effect of a qualified disclaimer for estate tax purposes are found in § 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, his legal representative, or the holder of the legal title to the property to which the disclaimer relates, no later than 9 months after the later of 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 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(a)(3) of the Gift Tax Regulations provides that the 9-month

period for making a disclaimer is generally determined with reference to the transfer creating the interest in the disclaimant. If a person to whom any interest in property passes by reason of the exercise, release, or lapse of a general power desires to make a qualified disclaimer, the disclaimer must be made within a 9-month period after the exercise, release, or lapse, regardless of whether the exercise, release, or lapse is subject to estate or gift tax.

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 that would be a qualified disclaimer if such property were the only property in which the disclaimant had an interest. Severable property is property that can be divided into separate parts each of which, after severance, maintains a complete and independent existence. For example, a legatee of shares of corporate stock may accept some shares of the stock and make a qualified disclaimer of the remaining shares.

Section 25.2518-3(d), Example (1), provides that A, a resident of State Q, died on August 1, 1978. A's will included specific bequests of 100 shares of stock in X corporation; 200 shares of stock in Y corporation; 500 shares of stock in Z corporation; personal effects consisting of paintings, home furnishings, jewelry, an silver; and a 500 acre farm consisting of a residence, various outbuildings, and 500 head of cattle. The laws of State Q provide that a disclaimed interest passes in the same manner as if the disclaiming beneficiary had died immediately before the testator's death. Pursuant to A's will, B was to receive both the personal effects and the farm. C was to receive all the shares of stock in Corporation X and Y, and D was to receive all the shares of stock in Corporation Z. B disclaimed 2 of the paintings and all of the jewelry, C disclaimed 50 shares of Y corporation stock, and D disclaimed 100 shares of Z corporation stock. If the remaining requirements of § 2518(b) and the corresponding regulations are met, each of these disclaimers is a qualified disclaimer for purposes of § 2518(a).

In the present case, Grandson 1 proposes to execute a disclaimer of a specific number of shares of each corporation's stock that will pass to him upon termination of Trust and that comprises one-half of Grandson 1's one-sixth interest in the Trust property. It is represented that Grandson 1 has not accepted any income or other benefit of the disclaimed property prior to executing the disclaimer and will not accept any income or benefit from the disclaimed property subsequent to the disclaimer. The disclaimer is described in terms of the number of shares of stock of each company's stock that is held by Trust. The shares that are to be disclaimed, must include the income and increase, if any, attributable to such stock since Date 6. Upon termination of Trust, the disclaimed portion will pass without direction on the part of Grandson 1, pursuant to the terms of the Trust and State 2 law, to Grandson 1's issue.

We conclude that, if the other requirements of State 2 law and § 2518(b) are satisfied, Grandson 1's disclaimer of a portion of his one-sixth interest in the Trust property that will pass to him upon termination of Trust will be a qualified disclaimer.

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 the appropriate party. While this office has not verified any part of the material submitted in support of the request for rulings, it is subject to verification and examination.

Except as specifically ruled above, no opinion is expressed as to the federal tax consequences of the facts described above under the cited provisions or any other provisions of the Code or regulations.

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

Lorraine E. Gardner
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Branch 4
Office of Associate Chief Counsel
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Enclosure

Copy of letter for section 6110 purposes

cc: