

Internal Revenue Service

Department of the Treasury

Number: **200339021**

Washington, DC 20224

Release Date: 09/26/2003

Index Number: 2511.10-00, 2518.01-01

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B04-PLR-148068-02

Date:

JUNE 19, 2003

Re:

LEGEND:

- Husband =
- Wife =
- Trust =
- Date 1 =
- Date 2 =
- Son 1 =
- Son 2 =
- Son 3 =

Dear :

This is in response to your August 22, 2002 letter and other correspondence requesting a ruling concerning the gift tax consequences of the release of the right to receive distributions from a trust.

You have requested the following ruling:

The disclaimer of the right to receive benefits from Trust B and the subsequent termination of Trust B and distribution of its assets to her three sons, the remainder beneficiaries, will not result in her having made a taxable gift under the provisions of Chapter 12 of the Internal Revenue Code, even though the disclaimer is not a qualified disclaimer within the meaning of section 2518.

The facts submitted are as follows:

Husband and Wife established Trust on Date 1. Section 1.03(c) of Trust provides that the term "Trustors" shall refer collectively to Husband and Wife.

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Section 1.10 provides that except as otherwise expressly provided in this Declaration, on the death of either Trustor, the Trusts created by this Declaration shall become irrevocable and not subject to amendment or modification.

Section 3.01 provides, in part, that as soon as convenient after the death of the first Trustor to die, the Trustee shall collect all proceeds payable to the Trustee by reason of such death and all bequests payable to the Trustee by reason of such death and all bequests and devises distributable to the Trust Estate under the terms of the last Will of such deceased Trustor, and shall divide the entire Trust Estate into two separate trusts to be known and herein designated as Trust A and Trust B.

Section 3.03 provides that after the death of the first of the Trustors to die, the Trustee shall pay to or apply for the benefit of the Surviving Trustor, annually or at more frequent intervals, all of the net income from the principal of Trust A. Thereafter, principal of Trust A shall be paid to or applied for the benefit of the Surviving Trustor as necessary for his or her comfort and well being.

Section 3.04 provides that the Surviving Trustor may at any time and from time to time withdraw such amounts, up to the whole thereof, from the principal or Trust Estate of Trust A as such Surviving Trustor may, at the time of any such withdrawal, designate in a written notice served on the Trustee.

Section 3.05 provides that on the death of the Surviving Trustor the principal of Trust A and any accrued or undistributed net income from the principal of Trust A shall go and be distributed by the Trustee in such manner and to such persons, including the estate, the creditors, or the creditors of the estate of the Surviving Trustor as the Surviving Trustor shall appoint and direct by specific reference to this power of appointment in his or her last will admitted to probate by a court of competent jurisdiction.

Section 3.07 provides that except as provided by section 3.12 (referring to certain insurance policies owned by Wife), the principal or Trust Estate of Trust B shall consist of all of the interests in each and every asset held by the Trustee pursuant to this Declaration, including any assets received by the Trustee to be held pursuant to this Declaration on or by reason of the death of the deceased Trustor, not allocated to the principal or Trust estate of Trust A.

Section 3.09 provides that during the life of the Surviving Trustor, if the net income and principal of Trust A is insufficient to maintain the Surviving Trustor in health and reasonable comfort and support the Surviving Trustor in his accustomed manner of living, the Trustee may, in the Trustee's discretion, pay to or apply for the benefit of the Surviving Trustor, upon the request of the Surviving Trustor, such amounts from the income or principal of Trust B as the Trustee may, in the Trustee's absolute discretion, deem necessary or advisable to maintain in health and reasonable comfort and support in his accustomed manner of living including medical, dental, hospital and surviving expenses and expenses of invalidism.

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Section 3.10 provides that the Trustee may pay to or apply for the benefit of any person, whether adult or minor, dependent on the Surviving Trustor for support, such amounts of the principal and income of Trust B as may be needed for the education including college and professional education at any accredited institution of the dependent's choice for any period of time that, in the judgment of the Trustee, is advantageous to the dependent concerned; the Trustee shall provide adequate amounts for all related living and travel expenses of the dependent within reasonable limits.

Section 3.11 provides, in part, that on the death of the Surviving Trustor, Trust B shall terminate and all the Trust Estate of Trust B then in possession of the Trustee shall go, and be by the Trustee transferred, conveyed and distributed in fee to the children of the Trustors, share and share alike as a class gift and not as named individuals, the issue of any child who does not survive termination of the Trust Estate taking his or her parent's share, by right of representation.

Husband died on Date 2. More than nine months have passed since Date 2. Wife and their three children, Son 1, Son 2, and Son 3, survived Husband. At all times since his death, Wife has been serving as Trustee of Trust. Wife represents that she has never been in a position to request a withdrawal from Trust B pursuant to section 3.09 or 3.10 of Trust. Wife does not anticipate that as a beneficiary of Trust B she will ever have need for a distribution from that Trust. Further, Wife would like her sons to commence to enjoy the benefits of their remainder interests in Trust B without having to wait for her death. Accordingly, Wife proposes to relinquish her beneficial interest in Trust B and to permit the Trustee to terminate Trust B and distribute its assets in equal shares to her three sons.

LAW AND ANALYSIS

Section 2501(a) provides that a gift tax is imposed for each calendar year on the transfer of property by gift during such calendar year by any individual, resident or nonresident.

Section 2511(a) provides that the tax imposed by section 2501 shall apply whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible.

Section 2512(b) provides that where property is transferred for less than an adequate and full consideration in money or money's worth, then the amount by which the value of the property exceeded the value of the consideration shall be deemed a gift, and shall be included in computing the amount of gifts made during the calendar year.

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) defines the term "qualified disclaimer" as 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.

In this case, Wife has a beneficial interest in Trust B. In the event that the net income and principal of Trust A is insufficient to maintain Wife in her accustomed manner of living, the Trustee may make payments of income and principal of Trust B to Wife as the Trustee deems necessary or advisable to maintain in health and reasonable comfort and support. Although Wife's rights to receive income and principal distributions from Trust B are contingent on her exhausting the income and principal of Trust A and subject to the discretion of Trustee, the relinquishment of these interests will be a transfer of property by gift under section 2501(a). Moreover, since the proposed disclaimer will occur more than nine months after the death of Husband, section 2518 will not apply. Accordingly, based on the facts submitted and the representations made, we conclude that Wife's renunciation will be a gift of her interest in Trust B to her sons. The value of the gift is a question of fact and the Service does not rule on such factual determinations. See Rev. Proc. 2003-1, 1 I.R.B. 1, 17.

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

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.

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.

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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.

Sincerely yours,

Lorraine E. Gardner
Senior Counsel, Branch 4
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure:

Copy of letter for section 6110 purposes