

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **200530004**

Release Date: 7/29/2005

Index Number: 2511.18-00, 2601.03-01

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B04

PLR-110214-05

Date: APRIL 06, 2005

In Re:

LEGEND:

- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
- Date 5 =
- Date 6 =
- Date 7 =
- Date 8 =
- Date 9 =
- Date 10 =
- Date 11 =
- Grandfather =
- Grandmother =
- Father =
- Taxpayer =
- Brother =
- State =
- Probate Court =
- State Law 1 =
- State Law 2 =
- State Law 3 =
- State Law 4 =

Dear :

This is in response to your February 16, 2005 letter and other correspondence requesting rulings concerning the gift and generation-skipping transfer (GST) tax consequences of the proposed disclaimer.

You have requested the following rulings:

1. Section 25.2511-1(c)(2) of the Gift Tax Regulations will apply to the Taxpayer's disclaimer of her remainder interest in the Subtrust.
2. Taxpayer's disclaimer of her remainder interest in the Subtrust within nine months after learning of the existence of the Subtrust will have been made "within a reasonable time after knowledge of the existence of the transfer" for purposes of section 25.2511-1(c)(2).
3. Taxpayer's disclaimer of her remainder interest in the Subtrust within nine months after obtaining a copy of Grandfather's will, and within nine months after the death of Father will not be a taxable gift under section 2501 of the Internal Revenue Code.
4. The transfer of property, upon the termination of the Subtrust, to Taxpayer's children, as a result of Taxpayer's disclaimer, will not be a taxable termination under chapter 13 and will not be subject to the GST tax.

The facts submitted are as follows:

Grandfather died on Date 1 (before January 1, 1977), a resident of State. Article Second of Grandfather's will provides that Grandfather's farm is to be held in trust for Grandmother. During Grandmother's life or until her remarriage, the rents, profits, and income from the farm are to be applied for the use of Grandmother. Upon Grandmother's death or remarriage, property in the trust is to be added to the trust established by Article Fourth.

Article Third provides that the balance of Grandfather's interests in real estate be held in trust for the benefit of his children and the lineal descendants of any deceased children during Grandmother's life or until her remarriage. During Grandmother's life or until her remarriage, the rents, profits, and income from the real estate are to be applied for the use of Grandfather's children and the lineal descendants of any deceased children, in equal shares, per stirpes. Upon Grandmother's death or remarriage, the property in the trust is to be added to the trust established by Article Fourth.

Article Fourth provides that the residuary estate is to be held in trust during Grandmother's life or until her remarriage, with one-third of the income to be paid to Grandmother and the balance of the income to be paid to Grandfather's children and the lineal descendants of any deceased children, in equal shares, per stirpes, during Grandmother's life. Upon Grandmother's death, the principal of the trust is to be divided into equal shares for each child then living and lineal descendants of any deceased child, one share for each child and one share for the lineal descendants of each deceased child. The trustee is to apply the income of each share, set apart for a child, to the use of that child, during his or her life. The trustees may, in their discretion,

accumulate, during the minority of the child, so much of his or her income as they deem unnecessary for the child's proper support and maintenance. The trustees may, in their discretion, pay over to such child, upon attaining the age of 25, a portion of the principal, not exceeding one-third. Upon the death of the child, the trustees are to pay the principal of the trust to the child's lineal descendants, in equal shares, per stirpes, or if there are no lineal descendants of child, then to Grandfather's legal heirs.

Grandmother died on Date 3 (before January 1, 1977) never having remarried, survived by Father and four other children. Pursuant to the provisions of Grandfather's will, upon Grandmother's death, the real estate held in the Article Second Trust and the Article Third Trust were added to the principal of the Article Fourth Trust. The principal of the Article Fourth Trust was then divided into five equal shares for Father and the four other children of Grandfather. No subsequent additions were made to the Article Fourth Trust or Father's share (known as the Subtrust).

Father died on Date 7, survived by Taxpayer, Brother, and two other children. Pursuant to the provisions of Grandfather's will, upon Father's death the Subtrust terminated and the remaining principal is to be divided among Taxpayer and her three siblings equally.

Taxpayer represents that, prior to Father's death, she was unaware that she had a remainder interest in any trust created by Grandfather's will. Taxpayer had no knowledge of the existence of the Article Fourth trust or the Subtrust. Taxpayer had never seen Grandfather's will.

On or about Date 8, Taxpayer received a letter from Brother, who served as a trustee of Subtrust, stating that Taxpayer had an interest in a trust created by Grandfather's will and that the interest became possessory upon Father's death. The letter stated that as soon as a custody account became active, Brother planned to distribute 50% of the securities in the Subtrust to Taxpayer and the other beneficiaries.

On Date 9, Brother's counsel sent Taxpayer's counsel a copy of Grandfather's will, a copy of an interim account with respect to Subtrust, and a copy of Probate Court's order accepting the interim account. Taxpayer's counsel forwarded these letters to Taxpayer on Date 10. Date 10 was the first time that Taxpayer saw Grandfather's will.

The records of Probate Court indicate that notices of applications for approval of several prior interim accounts with respect to Subtrust were mailed to Taxpayer. Taxpayer represents that she was not able to ascertain from such notices that she had an interest in any trust under Grandfather's will.

One such notice was sent out on or about Date 6. The notice was issued "In the Matter of Grandfather FBO Father." The notice did not set forth Taxpayer's name, a description of Subtrust, or a description of Taxpayer's interest in Subtrust. Taxpayer

represents that she was unable to ascertain from the Date 6 notice that she had an interest in the Subtrust.

Father served as Trustee from Date 2 until Date 7. Father did not discuss family finances with Taxpayer and discouraged Taxpayer from inquiring about family finances. Father divulged little or no information to her regarding Subtrust.

Taxpayer represents that she neither received nor accepted any income or principal from the Subtrust. Taxpayer intends to disclaim, by formula disclaimer under State law before Date 11, that portion of her remainder interest in Subtrust as will not subject her to gift tax and will not cause any GST tax to be imposed on any income or principal of Subtrust.

State Law 1 provides, in part, that a beneficiary under a will may disclaim in whole or in part any interest under a will by delivering a written disclaimer.

State Law 2 provides that the disclaimer shall (1) describe the interest disclaimed, (2) be executed by the disclaimant in the manner provided for the execution of deeds of real property either by the laws of this state or by the laws of the place of execution, and (3) declare the disclaimer and the extent thereof.

State Law 3 provides, in part, that a disclaimer of a future interest shall be delivered not later than the date which is nine months after the event that determines that the taker of the interest is finally ascertained and such interest is indefeasibly vested.

State Law 4 provides that the provisions of State Laws 1-3 shall apply to disclaimers made on or after Date 5, provided disclaimers respecting transfers of property made before and applicable to estates of persons dying before Date 5, shall be valid if made in accordance with the provisions of said sections in effect on Date 4, or in accordance with other statutory or common law.

LAW AND ANALYSIS

Rulings 1-3

Section 2501(a)(1) imposes a tax, for each calendar year, on the transfer of property by gift by any individual, resident or nonresident.

Section 2511 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 25.2511-1(c)(2) of the Gift Tax Regulations provides, in relevant part, that, in the case of taxable transfers creating an interest in the person disclaiming made

before January 1, 1977, where the law governing the administration of the decedent's estate gives a beneficiary, heir, or next-of-kin a right completely and unqualifiedly to refuse to accept ownership of property transferred from a decedent (whether the transfer is effected by the decedent's will or by the law of descent and distribution), a refusal to accept ownership does not constitute the making of a gift if the refusal is made within a reasonable time after knowledge of the existence of the transfer. The refusal must be unequivocal and effective under the local law. There can be no refusal of ownership of property after its acceptance. In the absence of the facts to the contrary, if a person fails to refuse to accept a transfer to him of ownership of a decedent's property within a reasonable time after learning of the existence of the transfer, he will be presumed to have accepted the property.

The Supreme Court has recognized that, under the predecessor to this regulation, an interest must be disclaimed within a reasonable time after obtaining knowledge of the transfer creating the interest to be disclaimed, rather than within a reasonable time after the distribution or vesting of the interest. Jewett v. Commissioner, 455 U.S. 305 (1982).

Based on the information submitted and the representations made, we conclude that Taxpayer's disclaimer within nine months of learning of the existence of Subtrust will be made within a reasonable time after knowledge of the existence of the transfer under section 25.2511-1(c)(2). Therefore, provided that Taxpayer's disclaimer is valid under State law and assuming the other requirements of section 25.2511-1(c)(2) are met, Taxpayer's disclaimer of her remainder interest in the Subtrust will not be a taxable gift under section 2501.

Ruling 4

Section 2601 imposes a tax on every generation-skipping transfer. Under section 1433(b)(2)(A) of the Tax Reform Act of 1986 and section 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations, the tax does not apply to any generation-skipping transfer under a trust (as defined in section 2652(b)) that was irrevocable on September 25, 1985. The rule of the preceding sentence does not apply to a pro rata portion of any generation-skipping transfer under an irrevocable trust if additions are made to the trust after September 25, 1985.

Section 26.2601-1(b)(1)(ii) provides that, except as provided in section 26.2601-1(b)(1)(ii)(B) (relating to powers retained by the settlor that would cause the trust to be included in the settlor's gross estate under section 2038) or section 26.2601-1(b)(1)(ii)(C) (relating to life insurance policies includible in the insured's gross estate under section 2042), any trust in existence on September 25, 1985 is considered an irrevocable trust.

Subtrust was irrevocable on September 25, 1985, and no post-September 25, 1985, additions have been made to Subtrust. Accordingly, Subtrust is exempt from the

GST tax. As discussed above, assuming Taxpayer executes the disclaimer as proposed, the disclaimer will not constitute a gift subject to federal gift tax. Based on the information submitted and the representations made, the transfer of property, upon the termination of the Subtrust, to Taxpayer's children, as a result of Taxpayer's disclaimer, will not be a taxable termination under chapter 13 and will not be subject to the GST tax.

In accordance with the Power of Attorney on file with this office, copies of this letter are being sent to your authorized representatives.

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.

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,

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