

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:P&SI:4-PLR-119098-99
Date:
April 26, 2000

Re:

Legend

Decedent =

Spouse =

Child 1 =

Child 2 =

Child 3 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Executor =

Court =

State =

County =

Statute A =

Statute B =

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Dear _____ :

This responds to your letter dated December 2, 1999, and subsequent correspondence, requesting rulings on behalf of Spouse, Child 1, Child 2, and Child 3 regarding the application of § 2518 of the Internal Revenue Code to disclaimers of interests in a trust and on behalf of Executor regarding the application of § 2056 to the division and reformation of a trust.

You represent the facts as follows:

Decedent died testate on Date 1 survived by Spouse, Child 1, Child 2, and Child 3. Article THIRD of Decedent's will dated Date 2, provides that the remainder of Decedent's estate be held in trust. Specifically, Article FOURTH provides with respect to the trust that:

...

- (3) During the life of my husband, [Spouse], the trustees shall make such distributions of income and principal from time to time to benefit one or more members of the class consisting of my husband, [Spouse], and my three children, as the Trustees deem advisable, giving priority to the needs of my husband; provided, however, that no person who would directly benefit by a distribution shall have any power with respect to such distribution, even if such person is a Trustee.
- (4) Upon the death of my husband, [Spouse], or in the event he shall fail to survive me, the trustees shall divide any remaining trust property free of trust equally among my three children, [Child 1], [Child 2], and [Child 3], per stirpes.

Article THIRD of Decedent's will names Spouse, Child 1, Child 2, and Child 3 as the trustees of the trust.

Child 1, Child 2, and Child 3 have executed irrevocable disclaimers of their respective interests in trust in any income or principal distributions from the trust during the lifetime of Spouse. The disclaimers were delivered to the Executor of Decedent's estate and the Register of Wills for County by Date 3. Date 3 is not later than 9 months after Decedent's death. Child 1, Child 2, and Child 3 will not serve as trustees of the trust, and the Executor of Decedent's estate will petition Court to appoint a substitute co-trustee to serve with Spouse.

The Executor of Decedent's estate petitioned Court for permission to fractionally divide the trust created under Article FOURTH into two separate shares with identical terms. The Executor has also petitioned the Court to require the annual distribution of income to Spouse (who is the only eligible beneficiary following the execution of the disclaimers) from any trust created under Article FOURTH. The Executor intends to

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qualify one of the fractional share trusts as qualified terminable interest property (QTIP) for federal estate tax purposes, make the election under § 2056(b)(7), and qualify for the marital deduction. On Date 4, Court granted the Executor's petition and ordered the division of the trust under Article FOURTH into two shares, one share to be funded with a fractional share of the property, and the second trust to be funded with the balance, such division to be made in accordance with the fair market value of the property at the time of the division. The Court also granted the request to reform the trust to require that the income be distributed at least annually.

Under State law, a person to whom an interest in property would have devolved by whatever means may disclaim such interest in whole or in part. A disclaimer in whole or part may be made of any present or future interest, vested or contingent, including a possible future right to take as a distributee under an unexercised power of appointment or under a discretionary power to distribute income or principal. A disclaimer relates back for all purposes to the date of the death of the decedent. Generally, unless a testator provided for another disposition, the disclaimer shall be equivalent to the disclaimant's having died before the decedent. Statute A. Child 1, Child 2, and Child 3 represent that there are no express or implied agreements that the disclaimed interests are to be given or bequeathed to a person specified by them. In addition, Child 1, Child 2, and Child 3 received no compensation for their disclaimers.

You have requested the following rulings:

1. The disclaimers by Child 1, Child 2, and Child 3 of their respective interests in the trust as discretionary beneficiaries of income and principal along with their refusals to serve as co-trustees constitute qualified disclaimers under § 2518(b) and are not treated as gifts for Federal gift tax purposes.
2. The valid disclaimers, together with the division and reformation of the trust requiring that income be distributed to Spouse at least annually, enables the Executor to qualify one of the fractional share trusts as a QTIP marital trust under Decedent's will.

Ruling Request No. 1 – Disclaimers

Section 2518(a) provides that, if a person makes a qualified disclaimer with respect to any interest in property, Subtitle B (relating to the estate, gift and generation-skipping transfer taxes) shall apply with respect to such interest as if the interest had never been transferred to such person.

Section 2518(b) provides that the term "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,

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2. such writing is received by the transferor of the interest, the transferor's legal representative, or the holder of the legal title to the property to which the interest related not later than the date which is 9 months after the later of—
 - (A) the date on which the transfer creating the interest in such person is made, or
 - (B) the day on which such person attains age 21,
3. such person 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 either—
 - (A) to the spouse of the decedent, or
 - (B) to a person other than the person making the disclaimer.

Section 25.2518-1(b) of the Gift Tax Regulations provides that, if a qualified disclaimer is made, the property is treated, for Federal gift, estate, and generation-skipping transfer tax purposes, as passing directly from the transferor, and not from the disclaimant, to the person entitled to receive the property as a result of the disclaimer.

Section 25.2518-2(d)(2) provides that if a beneficiary who disclaims an interest in property is also a fiduciary, actions taken by such person in the exercise of fiduciary powers to preserve or maintain the disclaimed property shall not be treated as an acceptance of such property or any of its benefits. Under this rule, for example, an executor who is also a beneficiary may direct the harvesting of a crop or the general maintenance of a home. A fiduciary, however, cannot retain a wholly discretionary power to direct the enjoyment of the disclaimed interest. For example, a fiduciary's disclaimer of a beneficial interest does not meet the requirements of a qualified disclaimer if the fiduciary exercised or retains a discretionary power to allocate enjoyment of that interest among members of a designated class.

Under § 25.2518-2(e)(1), in order to constitute a qualified disclaimer, the disclaimed interest must pass without any direction on the part of the person making the disclaimer to a person other than the disclaimant. The requirements of a qualified disclaimer under § 2518 are not satisfied if the disclaimant, either alone or in conjunction with another, directs the redistribution or transfer of the property or interest in property to another person (or has the power to direct the redistribution or transfer of the property or interest in property to another person unless such power is limited by an ascertainable standard).

Under § 25.2518-3(a)(1), 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. In general, each interest in property that is separately created by the transferor is treated as a separate interest. For example, if an income interest in securities is bequeathed to A for life, then to B for life, with the remainder interest in such securities bequeathed to A's estate, and if the remaining requirements of § 2518(b) are met, A could make a qualified disclaimer of either the

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income interest or the remainder, or an undivided portion of either interest. A could not, however, make a qualified disclaimer of the income interest for a certain number of years.

In § 25.2518-3(d), Example 8, under the terms of E's will, E's shares of stock in X, Y, and Z corporations are transferred to a trust. The trust instrument 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 disclaims F's entire income interest in the trust while retaining the interest F has in corpus. The example concludes that the disclaimer is a qualified disclaimer.

Section 25.2518-3(d), Example 11, describes a situation where under the terms of a testamentary trust, W is to receive all trust income for life. The trustee has the power to invade trust corpus for the support and maintenance of D during the life of W. At W's death, the trust corpus is payable to D. D disclaims the right to receive distributions of trust corpus during W's lifetime, but retains the right to receive the remainder on W's death. The example concludes that D's disclaimer is a qualified disclaimer.

In the present case, Child 1, Child 2, and Child 3 executed irrevocable disclaimers of any income or principal distributions from the trust during Spouse's lifetime. It was represented that the disclaimers were valid under State law and were delivered to the Executor of Decedent's estate not later than 9 months after Decedent's death. Child 1, Child 2, and Child 3 also represented that they have not accepted any benefits from the disclaimed property. Therefore, based on the facts and representations, we conclude that the disclaimers executed by Child 1, Child 2, and Child 3 satisfy the requirements of § 2518, constitute qualified disclaimers, and are not treated as gifts for Federal gift tax purposes.

Ruling Request No. 2 - Qualified Terminable Interest Property

Section 2056(a) provides that the value of a decedent's taxable estate is 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, but only to the extent that such interest is included in determining the value of the gross estate.

Section 2056(b)(1) provides the general rule that no deduction is allowed for an interest passing to the surviving spouse if, on the lapse of time, on the occurrence of an event or contingency, or on the failure of an event or contingency to occur, the interest passing to the surviving spouse will terminate or fail.

Section 2056(b)(7) provides an exception to the terminable interest rule in the case of qualified terminable interest property.

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Section 2056(b)(7)(A) provides that qualified terminable interest property is treated as passing to the surviving spouse and no part of such property is treated as passing to any person other than the surviving spouse. Thus, the value of such property is deductible from the value of the gross estate under § 2056(a).

Section 2056(b)(7)(B)(i) defines the term “qualified terminable interest property” as property: (1) which passes from the decedent, (2) in which the surviving spouse has a qualifying income interest for life, and (3) to which an election under § 2056(b)(7)(B)(v) applies.

Section 2056(b)(7)(B)(ii) and the regulations thereunder provide that the surviving spouse will be considered to have a qualifying income interest for life if: (1) the surviving spouse is entitled to all the income from the property, payable annually or at more frequent intervals, and (2) no person, including the surviving spouse, has a power to appoint any part of the property to any person other than the surviving spouse during the surviving spouse’s lifetime.

Section 2056(b)(7)(B)(v) provides that an election under § 2056(b)(7) with respect to any property is to be made by the executor on the return of tax imposed by § 2001. The election, once made, is irrevocable.

In the present case we conclude that, as a result of the disclaimers by Child 1, Child 2, and Child 3 and the Court orders, the fractional share of trust will satisfy the requirements of § 2056(b)(7) and the Executor of Decedent’s estate may elect to treat the property passing to that trust as qualified terminable interest property.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under the cited provisions or any other provisions of the Code. 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 who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,
Assistant Chief Counsel
(Passthroughs and Special Industries)
By: Robert Honigman
Acting Assistant to the Branch Chief
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