Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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Person To Contact:
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Telephone Number:

Refer Reply To:
CC:PSI:B04
PLR-152905-07
Date:
May 20, 2008

Re:

Legend
Decedent =
Spouse =
Child 1 =
Child 2 =
Child 3 =
Date 1 =
Date 2 =
IRA =
Plan =

State =
Statute 1 =
Statute 2 =

Dear

This is in response to a letter dated November 27, 2007, from your authorized representative, in which you request several rulings with respect to certain disclaimers. More specifically, rulings were requested under §§ 401(a)(9), 408(d), and 2518 of the Internal Revenue Code. As discussed with your authorized representative, this letter responds to the ruling request under § 2518. The other requested rulings will be address in separate correspondence.

FACTS

The information submitted and the representations made are summarized as follows. Decedent, a resident of State, died testate on Date 1, survived by Spouse, and three children, Child 1, Child 2, and Child 3.

Article SECOND of Decedent's Will devises the residue of Decedent's estate to Spouse, if Spouse survives Decedent. If Spouse fails to survive Decedent, the residue of Decedent's estate passes in equal shares to Decedent's children who survive him and to the then living issue of each of his children who may have predeceased him.

Article SEVENTH of Decedent's Will provides that any beneficiary, whether entitled originally or as a result of a disclaimer, may disclaim any part or all of any gift or gifts to him or her. Any interest disclaimed shall be disposed of as if the beneficiary thereof had predeceased Decedent.

At the time of Decedent's death, Decedent was the owner of an individual retirement account, the IRA, described in § 408(a). In addition, Decedent was a participant in a retirement plan, the Plan, described in § 401(k). Spouse is named as the beneficiary of both the IRA and the Plan. No contingent or successor beneficiary is named with respect to either the IRA or the Plan. It is represented, therefore, that if Spouse had predeceased Decedent, the proceeds of the IRA and the Plan would have passed to Decedent's estate.

On Date 2, within 9 months of Date 1, Spouse executed a written disclaimer (Disclaimer #1) and delivered the disclaimer to the custodian of the IRA and to the Executor of Decedent's estate. Pursuant to Disclaimer #1, Spouse disclaimed her entire interest in the IRA that passed to Spouse as a designated beneficiary of the IRA. In addition, Spouse disclaimed her interest in Decedent's residuary estate attributable to the IRA that passed to her as a beneficiary of Decedent's estate under Article SECOND of Decedent's will (as a result of her disclaimer with respect to the IRA). On Date 2, Spouse also executed a second written disclaimer (Disclaimer #2) and delivered the disclaimer to the custodian of the Plan and to the Executor of Decedent's estate. Pursuant to Disclaimer #2, Spouse disclaimed her entire interest in the Plan that passed to Spouse as a designated beneficiary of the Plan. In addition, Spouse disclaimed her interest in Decedent's residuary estate attributable to the Plan that passed to her under Article SECOND of Decedent's will as a beneficiary of Decedent's estate (as a result of her disclaimer with respect to the Plan). Spouse represents that she has not received or accepted any benefits with respect to the IRA or the Plan.

State Statute 1 provides, generally, that a beneficiary under a nontestamentary instrument may disclaim any interest passing to the beneficiary. If the disclaimer satisfies the requirements of State Statute 1, then the disclaimed interest passes as provided in the nontestamentary instrument, if the instrument provides for disposition in the event of a disclaimer. If the instrument does not provide for an alternative disposition in the event of a disclaimer, then the interest passes as if the disclaimant died immediately before the effective date of the nontestamentary instrument. In general, the disclaimer must be made within nine months of the effective date of the nontestamentary instrument.

State Statute 2 provides, generally, that an heir, devisee, legatee, person succeeding to a disclaimed interest, or a beneficiary under a will, may disclaim any

interest passing to the beneficiary under a will. If the disclaimer satisfies the requirements of State Statute 2, then the disclaimed interest passes as provided in the testamentary instrument, if the instrument provides for disposition in the event of a disclaimer. If the instrument does not provide for an alternative disposition in the event of a disclaimer, then the disclaimed interest passes as if the disclaimant had predeceased the decedent. In general, the disclaimer must be made within nine months after the death of the decedent.

You have requested a ruling that Spouse timely filed qualified disclaimers of her interests in the IRA and the Plan, as addressed in §§ 2046 and 2518, and as a result of such disclaimers and the lack of a successor named beneficiary with respect to either the IRA or the Plan, the property so disclaimed first passed to Decedent's estate and then to Decedent's children.

LAW AND ANALYSIS:

Section 2046 provides that for estate tax purposes, disclaimers of property interests passing upon death are treated as provided in § 2518.

Section 2518(a) provides that, if a person makes a qualified disclaimer with respect to any interest in property, then for purposes of the estate and gift tax the disclaimed interest is treated as if it never passed to that person.

Section 2518(b) defines a qualified disclaimer as an irrevocable and unqualified refusal by a person to accept an interest in property but only if --

(1) the refusal is in writing,

(2) the 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 relates not later than the date that is 9 months after the later of --

(A) the date on which the transfer creating the interest in the person is made, or

(B) the day on which the person attains age 21,

(3) the person disclaiming the interest 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 25.2518-2(c)(3) provides that, for purposes of the time limitation, the 9-month period for making a disclaimer generally is to be determined with reference to the taxable transfer creating the interest in the disclaimant.

Section 25.2518-2(d)(1) provides that a qualified disclaimer cannot be made with respect to an interest in property if the disclaimant has accepted the interest or any of its benefits, expressly or impliedly, prior to making the disclaimer. Acceptance is manifested by an affirmative act that is consistent with ownership of the interest in the property. Acts indicative of acceptance include: using the property or the interest in the property; accepting dividends, interest, or rents from the property; and directing others to act with respect to the property or interest in the property. However, a disclaimant is not considered to have accepted the property merely because, under applicable local law, title to the property vests immediately on the decedent's death in the disclaimant.

Section 25.2518-3(c) provides that the disclaimer of a specific pecuniary amount out of a pecuniary or nonpecuniary bequest or gift can be a qualified disclaimer provided that no income or other benefit of the disclaimed amount inures to the benefit of the disclaimant either prior to or subsequent to the disclaimer. Following the disclaimer, the amount disclaimed and any income attributable to such amount must be segregated based on the fair market value of the assets on the date of the disclaimer or on a basis that is fairly representative of the value changes that may have occurred between the date of transfer and the date of the disclaimer. The regulation further provides that a pecuniary amount that is distributed to the disclaimant from the bequest prior to the disclaimer is treated as a distribution of corpus from the bequest that does not preclude a disclaimer with respect to the balance of the bequest. However, the acceptance of a distribution from the bequest is considered an acceptance of a proportionate amount of the income earned by the bequest. That income must be segregated from the disclaimed amount and cannot be disclaimed. The regulation provides a formula to determine the proportionate share of the income considered to be accepted by the disclaimant, and thus, not eligible to be disclaimed, as follows:

$$\frac{\text{Total amount of distributions received by the disclaimant out of gift or bequest}}{\text{Total value of the gift or bequest on the date of the transfer}} \times \text{Total amount of income earned by the bequest between the date of transfer and the date of disclaimer}$$

In the present case, pursuant to Disclaimer #1 and Disclaimer #2, Spouse disclaimed her interests, as the designated beneficiary and as a residuary beneficiary under Decedent's will, in the IRA and the Plan. The disclaimers were in writing and made within 9 months of Decedent's death. Spouse represents that she has not accepted any benefits in the property subject to the disclaimers, and that the disclaimers are valid under State law.

As a result of Disclaimers #1 and #2, under State Statute 1, Spouse's interests in the IRA and the Plan as designated beneficiary will pass, without any direction on the part of Spouse, to Decedent's estate. Also, as a result of Disclaimers #1 and #2, in accordance with State Statute 2, Spouse's interest in the Decedent's residuary estate

attributable to the IRA and the Plan will be distributed, without any direction on the part of Spouse, to Child 1, Child 2 and Child 3, in accordance with Article SEVENTH and Article SECOND of Decedent's will. Based on the facts and representations, and provided that Disclaimers #1 and #2 are valid under State law, the disclaimers are qualified disclaimers for purposes § 2518. Therefore, the disclaimers did not result in a taxable gift for federal gift tax purposes by Spouse.

The rulings contained in this letter are based upon information submitted and representations made by the taxpayers and accompanied by a penalty of perjury statement executed by the appropriate parties. 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 taxpayers requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

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

Sincerely,

George L. Masnik
Chief, Branch 4
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures
Copy for section 6110 purposes
Copy of this letter

cc: