**Internal Revenue Service** **Department of the Treasury**

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**Person to Contact:**

**Telephone Number:**

**Refer Reply To:**
CC:DOM:P&SI:7:PLR-107351-99
**Date:**
May 27, 1999

Re:

Legend:
Taxpayer:
Date 1:
Decedent:
Date 2:
Date 3:
Son:
Trust Company:
Date 4:
Child 1:
Child 2:
Date 5:
Statute 1:
Statute 2:
State:

Dear

We received the , letter submitted on behalf of Taxpayer, in which a ruling is requested on the federal gift tax consequences of a proposed disclaimer. This letter responds to that request.

The facts and representations submitted are as follows. On Date 1, Decedent executed a Will. On Date 2, Decedent by Codicil ratified and confirmed his Will. Decedent died on Date 3.

Under Decedent's Will, a trust (Trust) was established for the benefit of Son, Son's wife (Taxpayer), and Son's descendants.

Son and Trust Company served as Trustees of Trust until Date 4, when Son resigned in favor of his two children, Child 1 and Child 2. Child 1, Child 2, and Trust Company have been serving as co-Trustees of Trust since Date 4.

Paragraph EIGHT(A) of the Will provides that the net income from Trust is to be paid to Son for his lifetime.

Paragraph EIGHT(B) of the Will provides that upon Son's death, the Trustees shall pay such part or all of his then remaining trust, both principal and undistributed income, unto and among such one or more persons or legal entities (excluding, however, Son's estate, Son's creditors, and the creditors of Son's estate) and in such amounts and portions, in further trust or otherwise, as such Son shall validly designate and appoint by his Last Will and Testament duly executed by him after Decedent's death and probated within six months after his death and referring specifically by name and description to the limited testamentary power of appointment.

Paragraph EIGHT(C) of the Will provides that all assets not validly appointed by Son after his death shall be held in further trust (or if Son does not survive Decedent, shall after Decedent's death be held in trust) for Taxpayer and the Trustees shall pay the entire net income therefrom to Taxpayer, if living, for her life.

Paragraph EIGHT(D) of the Will provides that upon Taxpayer's death, the Trustees shall pay over and distribute such part or all of Trust, both principal and income, unto and among such one or more of Decedent's then living descendants and the then living spouses of Decedent's descendants, in such amounts and proportions, in further trust or otherwise, as Taxpayer shall validly designate and appoint by her Last Will and Testament executed by her after Decedent's death and Son's death and duly probated within six months after her death and referring specifically by name and description to the limited testamentary power of appointment.

Paragraph EIGHT(E) of the Will provides that all assets, if any, of Trust remaining in the hands of the Trustees upon the death of the last to die of Son, Taxpayer, and Decedent and not validly appointed by Will shall be thereafter administered for such Son's then living descendants as provided in paragraph TEN, but if no descendant of Son is then living, shall be administered for the benefit of Decedent's other child, his wife, and his descendants.

Paragraph NINE(B) of the Will provides that while a share shall be administered under paragraph B for the benefit of a descendant or descendants of Son, the Trustees may pay to or apply for the benefit of such one or more of Son's children and other descendants from time to time living such sums from the net income and/or the principal of such share, in such amounts and proportions, whether equal or unequal, and at such times, whether regular or irregular, as the Trustees in their discretion may from time to time consider advisable and appropriate to provide or assist in providing for

the proper maintenance, support, or education of such person or persons. The Trustees may accumulate all net income, if any, not in their judgment required for such purposes from time to time and may add the same or any part thereof to the principal of such share in such amounts and at such times as they in their discretion shall deem advisable.

Paragraph NINE(C)(4) of the Will provides generally that after Son's death, if Taxpayer survives him, she shall have the power to appoint principal from Trust to and among Decedent's issue, which appointment is to be effective at her death.

Paragraph ELEVEN(B) of the Will provides that Taxpayer has the non-cumulative right to withdraw from principal each year the greater of (i) Five Thousand Dollars ($5,000), or (ii) Five percent of the aggregate value at the end of the year of the assets out of which or the proceeds of which the exercise of such right to withdraw may be satisfied as provided in Trust.

Son died on Date 5, survived by Taxpayer, Child 1, and Child 2.

Taxpayer represents that she first learned of her interest in Trust after Son's death on Date 5. Taxpayer further represents that prior to this time, other than a general understanding that Son received income from certain trusts created by Son's family, Taxpayer had no actual knowledge of the terms or contents of Decedent's Will or Trust or that she was a contingent beneficiary. Taxpayer also represents that at no time has Taxpayer received any benefits from Trust.

Taxpayer wishes to disclaim all of her interest in Trust, including the income interest, the special power of appointment, and the right of withdrawal. It is represented that the disclaimer will be valid under local law in that (a) Taxpayer has not received or accepted any interest in, nor exercised any powers over the property to be disclaimed or any benefits therefrom at any time or since the date of Decedent's death, (b) the disclaimer is in writing, irrevocable and unqualified, describing the interests to be disclaimed and is to be signed by Taxpayer, and (c) the disclaimer will be delivered to the Register of Wills and the Trustees of Trust on or before the date which is nine months after the date of Son's death.

You have asked us to rule that (1) Taxpayer's disclaimer of her interest within nine months after learning of the existence of her interest in Trust was made within a reasonable time after knowledge of the existence of the transfer for purposes of § 25.2511-1(c)(2) and (2) Taxpayer's disclaimer of her interest in Trust within nine months of Son's death is not a taxable gift under § 2511.

Ruling Request 1:

Section 2501 of the Internal Revenue Code provides for a gift tax on the transfer of property by gift. Section 2511 provides that the gift tax imposed by § 2501 shall apply whether the transfer is in trust or otherwise, whether the gift is direct or indirect, or whether the property is real or personal, tangible or intangible.

Section 25.2511-1(a) provides that the gift tax applies to a transfer by way of gift 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. For example, a taxable transfer may be effected by the creation of a trust, the forgiving of a debt, the assignment of a judgment, the assignment of the benefits of an insurance policy, or the transfer of cash, certificates of deposit, or Federal, State or municipal bonds.

Section 25.2511-1(c)(1) provides that the gift tax also applies to gifts indirectly made. Thus, any transaction in which an interest in property is gratuitously passed or conferred upon another, regardless of the means or device employed, constitutes a gift subject to the tax.

Section 25.2511-1(c)(2) applies in the case of "taxable transfers" creating an interest in the person disclaiming made before January 1, 1977. The regulation provides that 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 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 local law. There can be no refusal of ownership of property after its acceptance. In the absence of 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. Whether there has been an unqualified refusal to accept ownership is dependent on the facts and circumstances of each case.

In Jewett v. Commissioner, 455 U.S. 305, 312 (1982), the Court held that under a prior version of the regulation (in effect prior to the enactment of § 2518), the requirement that the disclaimer be made within a reasonable time after the disclaimant obtained knowledge of the transfer references knowledge of the transfer creating the interest that is to be disclaimed, rather than the actual transfer of the underlying property to the disclaimant. The "transfer" creating the interest occurs when the interest (whether vested or contingent) is created, and not when the interest actually vests in the disclaimant. Further, in Ordway v. United States, 908 F.2d 890 (11th Cir. 1990), cert. denied, 501 U.S. 1261 (1991), the court held that for purposes of § 25.2511-1(c)(1), a "taxable transfer" occurs where there is a generic completed gift for federal transfer tax purposes, regardless of whether an estate or gift tax is imposed on the completed transfer. See also, Irvine v. United States, 511 U.S. 224 (1994), where the

Court discussed, but did not decide, these issues involving the application of that regulation.

The requirement in the regulations that the disclaimer must be made within a "reasonable time" is a matter of federal, rather than local law. Jewett v. Commissioner, 455 U.S. at 316. Whether a period of time is reasonable under the regulations is dependent on the facts and circumstances presented. See, e.g., the Tax Court opinion in Jewett v. Commissioner, 70 T. C. 430, 438 (1978).

With respect to the disclaimer of interests created after December 31, 1976, § 25.2518-2(c)(3) provides, in part, that in the case of a nongeneral power of appointment, the holder of the power, permissible appointees, or takers in default of appointment must disclaim within a nine month period after the original taxable transfer that created or authorized the creation of the power.

Section 2041(b) provides, in part, that the gross estate includes any property with respect to which the decedent possessed at the time of death a general power of appointment created after October 21, 1942.

Section 20.2041-1(c)(1) provides that a power of appointment is not a general power if it is exercisable only in favor of one or more designated persons or classes other than the decedent, the decedent's creditors, the decedent's estate or the creditors of the estate, or the power is expressly not exercisable in favor of the decedent, his creditors, the decedent's estate or the creditors of his estate.

Statute 1 governs the disclaimer of interests created under a Will, and provides that the disclaimer must be received, if a future interest, not later than nine months after the event determining that the taker of the property or interest has become finally ascertained and the interest indefeasibly vested.

Statute 2 provides that the disclaimer shall be in writing and shall:

(1) Be an irrevocable and unqualified refusal by the disclaimant to accept property or an interest therein;

(2) Describe the property or the interest disclaimed;

(3) Declare the disclaimer and the extent thereof; and,

(4) Be signed by the disclaimant.

As discussed above, § 25.2511-1(c)(2) governs the effectiveness of a disclaimer with respect to an interest created in a "taxable transfer" prior to 1977. In the instant case, under the terms of Trust, Taxpayer was a contingent beneficiary of Trust, in the

event she survived Son. Under Jewett and Ordway, the "taxable transfer" creating Taxpayer's interest in Trust occurred on Date 3, when Decedent died. Therefore, § 25.2511-1(c)(2) applies in determining the effectiveness of Taxpayer's disclaimer for federal transfer tax purposes.

As discussed above, under § 25.2511-1(c)(2), the disclaimer will not be subject to the gift tax if it is made within a reasonable time after the disclaimant obtains knowledge of the transfer creating the interest. The question of what constitutes a reasonable time is dependent on federal, rather than state, criteria and is generally dependent on the facts and circumstances presented.

We note that a disclaimer made within nine months of the disclaimant learning of the existence of the transfer creating the interest would generally satisfy the reasonable time requirement of the regulations, in the absence of facts indicating a contrary result is warranted. Accordingly, Taxpayer's disclaimer within nine months of learning of the existence of Trust would be timely for purposes of § 25.2511-1(c)(2). We express or imply no opinion as to when Taxpayer first obtained the requisite knowledge of the transfer creating the interest.

Ruling Request 2:

In order to satisfy the requirements of § 25.2511-1(c)(2), the disclaimer must be effective under local law.

The proposed disclaimer meets the requirements of local law because (1) it is in writing, (2) it is an irrevocable and unqualified refusal by Taxpayer to accept property or an interest therein, (3) it describes the property or interest to be disclaimed, (4) it declares the disclaimer and the extent thereof, and (5) it is signed by the disclaimant.

Statute 1 provides that the disclaimer must be made not later than nine months after the event determining that the taker of the property or interest has become finally ascertained and the interest indefeasibly vested.

In the instant case, Taxpayer's interest became indefeasibly vested on Son's death. Accordingly, Taxpayer's disclaimer within nine months of Son's death is timely under the State disclaimer statutes, regardless of when Taxpayer obtained knowledge of the "transfer" for purposes of State law. Thus, we conclude that Taxpayer's disclaimer within nine months of Son's death is effective under State law.

Accordingly, we conclude that, assuming that Taxpayer does not accept any of the benefits from Trust prior to the disclaimer, and assuming that Taxpayer's disclaimer is actually filed within nine months of learning of the existence of Trust, Taxpayer's disclaimer would be effective for federal gift tax purposes. We, however, specifically decline to rule as to when Taxpayer first obtained knowledge of Trust.

Except as specifically ruled above, no opinion is expressed or implied as to the federal tax consequences of the situation described above under any other provisions of the Internal Revenue Code.

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

Sincerely,

James C. Gibbons

James C. Gibbons, Assistant to the Chief
Branch 7
Office of the Assistant Chief Counsel
(Passthroughs and Special Industries)

Enclosures:
Copy for § 6110 purposes