Internal Revenue Service

Department of the Treasury

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Person to Contact:

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LEGEND:

a	=
A	=
Decedent	=
b	=
c	=
d	=
e	=
f	=
g	=
h	=
i	=
j	=
State	
B	=
k	=

I =

Spouse =

m =

Dear Sir or Madam:

We received your letter, dated , requesting rulings under §§ 2041, 2518, and 2601 of the Internal Revenue Code. This letter responds to your request.

The information submitted and the representations made are summarized as follows: On a, A established two irrevocable trusts, Trust 1 and Trust 2. Trust 1 was created for the benefit of Decedent and Trust 2 was created for the benefit of B, A's spouse, and A's children. Decedent is the son of A.

In b, additional assets valued at c were placed in Trust 1. An additional contribution in the amount of d was made to Trust 1 in e. You represent that the proportionate value of the b addition was f percent and the proportionate value of the e addition was g percent. The aggregate proportionate value the additions to Trust 1 is h percent.

In e, an addition of i was made to Trust 2. The proportionate value of the addition to Trust 2 was j.

Trust 1 provides that net income from Trust 1 is to be paid to Decedent during his lifetime. On Decedent's death, the principal of Trust 1 is to be disposed of in such manner as Decedent, by his last will and testament, may have directed, or in the absence of such testamentary direction by Decedent, to his then living heirs as determined under the laws of State relating to intestacy.

Trust 2 provides that the net income from Trust 2 is to be paid to B during B's lifetime. On B's death, Trust 2 is to be divided into equal shares so that there is one share set apart for each child of A who is then living. One share is to be set apart for the living issue of each daughter of A who may then be deceased but represented by living issue, and one share is to be set apart for the living issue and/or widow of each son of A who may be deceased but represented by living issue and/or by a living widow who has not remarried.

Trust 2 further provides that each living child of A is entitled to receive the net income arising from the share set apart for him or her during his or her lifetime. On the death of a son of A, who has survived both A and B, the principal of the share set apart for the deceased son, including all additions and accruals thereto, is to be disposed of in the manner as that son, by his last will and testament, may have directed.

In case any son of A fails to exercise his testamentary power of appointment, then at his death, the principal of his share is to be distributed among his widow and/or issue in the proportions in which they may become entitled to receive his estate under the laws of State relating to intestacy. In case any son of A who fails to exercise his power of testamentary appointment is survived by a widow but not issue, then at his death his widow is entitled to receive one-half of his share and the other one-half is to be distributed among such of the other children of A as may be living, *per capita*, and the living issue representing such of them as may be deceased, *per stirpes*. Likewise, in case any son of A who fails to exercise his power of testamentary appointment is survived neither by a widow nor by issue, then at his death his entire share is to be distributed among such of the other children of A as may be living, *per capita*, and the living issue representing such of them as may be deceased, *per stirpes*.

Pursuant to the terms of Trust 2, the income from Trust 2 was distributed to B during B's lifetime. On B's death in k, Trust 2 was divided into equal shares, one share for each of child of A. Decedent, a child of A, received the net income from his share of Trust 2 during his lifetime.

Decedent died on l, survived by Spouse and m children.

Article Three, Section 1 of Decedent's will provides as follows:

> I recognize that there exist in which I may have a certain power of appointment over the corpus at the time of my death, I desire to deal with these powers as follows:
>
> (a) Irrevocable Trust (Trust 1) dated a, created by my father, A, for my benefit. By the terms of this instrument, I am given a general testamentary power of appointment. I specifically do not exercise said power.
>
> (b) Irrevocable Trust (Trust 2) dated a, created by my father, A, for the benefit of my mother, B, and myself. By the terms of this instrument, I am given a general testamentary power of appointment. I specifically do not exercise said power.

Because Decedent did not exercise the testamentary power of appointment over the corpus of Trust 1 and Trust 2, the takers in default under State's laws of intestacy

are Spouse (who takes 50 percent) and Decedent's m children (who divide in equal shares the remaining 50 percent).

Spouse proposes to disclaim her interest in Trust 1 and Trust 2. It is represented that Spouse will absolutely, irrevocably, completely, and unqualifiedly disclaim, renounce, release, and reject each and every right, title, claim, interest, and power in and to Trust 1 and Trust 2 that she may now have or at any time hereafter may or could have, in all cases, including but not limited to, any right to receive, directly or indirectly, any distributions of the disclaimed property from any source whatsoever, including any intestate distribution, to which the disclaimed property may by reason of the disclaimer be hereafter distributed.

It is represented that Spouse has not accepted or received any interest in Trust 1 or Trust 2, has not accepted or received any benefit of any such interest, and has not taken possession or accepted delivery of any property constituting such interest.

You have requested the following rulings:

(1) At the time of Decedent's death, Decedent had a general testamentary power of appointment over the assets of Trust 1 and Trust 2.

(2) Because each of Trust 1 and Trust 2 was irrevocable prior to October 21, 1942, the lapse of the general power of appointment does not cause the value of Trust 1 and Trust 2 (excluding the proportion of each Trust attributable to post-1942 contributions) to be includible in Decedent's estate for federal estate tax purposes.

(3) Because Decedent possessed a general power of appointment over Trust 1 and Trust 2, Spouse may disclaim, in whole or in part, Spouse's interest in either Trust or both Trusts within nine months of Decedent's death, and the disclaimers, if made within the 9-month period, will be qualified disclaimers under § 2518.

(4) To the extent that Spouse disclaims her interest in Trust 1 and Trust 2, the resulting transfers to Decedent's children will not be subject to the generation-skipping transfer (GST) tax, because Trust 1 and Trust 2 were irrevocable prior to September 25, 1985.

Rulings No. 1 and 2:

Section 2041(a)(1) provides that the value of the gross estate includes the value of all property with respect to which a general power of appointment created on or before October 21, 1942, is exercised by the decedent

(A) by will, or

(B) by a disposition which is of such nature that if it were a transfer of property owned by the decedent, such property would be includible in the decedent's gross estate under §§ 2035 to 2038, inclusive;

but the failure to exercise such power or the complete release of such power shall not be deemed an exercise thereof.

Section 2041(b)(1)(A) provides that the term "general power of appointment" means a power that is exercisable in favor of the decedent, his estate, his creditors, or the creditors of his estate.

Section 20.2041-1(e) of the Estate Tax Regulations provides that a power of appointment created by will is, in general, considered as created on the date of the testator's death. A power of appointment created by an inter vivos instrument is considered as created on the date the instrument takes effect. Such a power is not considered as created at some future date merely because it is not exercisable on the date the instrument takes effect, or because the identity of its holders is not ascertainable until after the date the instrument takes effect.

Section 20.2041-2(a) provides that property subject to a general power of appointment created on or before October 21, 1942, is includible in the gross estate of the holder of the power under § 2041 only if he exercised the power under specified circumstances, Section 2041(a)(1) requires that there be included in the gross estate of a decedent the value of property subject to such a power only if the power is exercised by the decedent either (1) by will, or (2) by a disposition which is of such nature that it were a transfer of property owned by the decedent, the property would be includible in the decedent's gross estate under § 2035 (relating to transfers in contemplation of death), 2036 (relating to transfers with retained life estate), 2037 (relating to transfers taking effect at death), or 2038 (relating to revocable transfers).

Section 20.2041-2(d) provides that a failure to exercise a general of appointment created on or before October 21, 1942, or a complete release of such a power is not considered to be an exercise of a general power of appointment. The phrase "a complete release" means a release of all powers over all or a portion of the property subject to a power of appointment, as distinguished from the reduction of a power of appointment to a lesser power. Thus, if the decedent completely relinquished all powers over one-half of the property subject to a power or appointment, the power is completely released as to that one-half. If at or before the time a power of appointment is relinquished, the holder of the power exercises the power in such a manner or to such an extent that the relinquishment results in the reduction, enlargement, or shift in a beneficial interest in property, the relinquishment will be considered to be an exercise and a release of the power.

Based on the information submitted and the representations made, we conclude that Decedent's power of appointment is a power of appointment that was created on or before October 22, 1942. Moreover, Decedent's power of appointment is a general power of appointment because it may be exercised in favor of Decedent, Decedent's creditors, Decedent's estate, or the creditors of Decedent's estate. However, because Decedent's failure to exercise the general power of appointment is not considered an exercise of the power, under § 20.2041-2(a), the lapse of the general power of appointment does not cause the value of Trust 1 and Trust 2 (excluding the proportion of each Trust attributable to post-1942 contributions) to be includible in Decedent's estate for federal estate tax purposes.

Ruling No. 3:

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 disclaims any interest in property, the interest is treated as if it had never been transferred to the disclaimant.

Section 2518(b) defines the term "qualified disclaimer" to mean 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, his or her legal representative, or the holder of the legal title to the property to which the interest relates not later than nine months after the later of the date on which the transfer creating the interest in the disclaimant is made or the date on which the disclaimant attains age 21,

(3) the disclaimant has not accepted 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 disclaimant to the decedent's spouse or to a person other than the disclaimant.

Section 25.2518-1(b) of the Gift Tax Regulations provides that if a person makes a qualified disclaimer as described in § 2518 and § 25.2518-2, for purposes of the federal estate, gift, and generation-skipping transfer tax provisions, the disclaimed interest in property is treated as if it had never been transferred to the person making the qualified disclaimer. Instead, it is considered as passing directly from the transferor of the property to the person entitled to receive the property as a result of the disclaimer. Accordingly, a disclaimant is not treated as making a gift.

Section 25.2518-2(c)(3) provides that if a person to whom any interest in property passes by reason of the exercise, release, or lapse of a general power desires to make a qualified disclaimer, the disclaimer must be made within a 9-month period after the exercise, release, or lapse regardless of whether the exercise, release, or lapse is subject to estate or gift tax. 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 9-month period after the original transfer that created or authorized the creation of the power.

It is represented that Spouse has not accepted any interest in or received any benefits from Trust 1 and Trust 2 and that as a result of the disclaimer, the interest will pass without any direction on the part of Spouse to persons other than Spouse.

Accordingly, based on the information submitted and the representations made, we conclude that the proposed disclaimers will constitute qualified disclaimers for purposes of §§ 2046 and 2518, provided that they are in writing and are delivered to the appropriate fiduciary within nine months of the date of Decedent's death. Moreover, we conclude that Spouse will not be treated as making a taxable gift.

Ruling No.4:

You requested a ruling that to the extent that Spouse disclaims her interest in Trust 1 and Trust 2, the resulting transfers to Decedent’s children will not be subject to the GST tax, because the Trust 1 and Trust 2 were irrevocable prior to September 25, 1985.

Section 2601 imposes a tax on every generation-skipping transfer made by the "transferor" to a "skip-person."

Section 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax regulations provides that the tax does not apply to any generation-skipping transfer under a trust (as defined in § 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 § 26.2601-1(b)(1)(ii)(B) or (C), any trust in existence on September 25, 1985, is considered an irrevocable trust.

Section 26.2601-1(b)(1)(v) provides that where any portion of a trust remains in the trust after the post-September 25, 1985, release, exercise, or lapse of a power of appointment over that portion of the trust, and the release, exercise, or lapse is treated to any extent as a taxable transfer under chapter 11 or chapter 12, the value of the

entire portion of the trust subject to the power that was released, exercised, or lapsed is treated as if that portion had been withdrawn and immediately retransferred to the trust at the time of the release, exercise, or lapse. The creator of the power will be considered the transferor of the addition except to the extent that the release, exercise, or lapse of the power is treated as a taxable transfer under chapter 11 or chapter 12.

Section 2611(a) defines the term "generation-skipping transfer" as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 26.2611-1 provides that a generation-skipping transfer is an event that is either a direct skip, a taxable distribution, or a taxable termination. The determination as to whether an event is a generation-skipping transfer is made by reference to the most recent transfer subject to the estate or gift tax.

Under § 25.2518-1(b) a disclaimed interest in property is treated as if it had never been transferred to the person making the qualified disclaimer. Instead, it is considered as passing directly from the transferor of the property to the person entitled to receive the property as a result of the disclaimer. Accordingly, we conclude that to the extent Spouse disclaims her interest in Trust 1 and Trust 2, the resulting transfers to Decedent’s children will not be subject to the GST tax.

Except as ruled above, we express or imply no opinion concerning the federal tax consequences of this transaction under the cited provisions of the Code or any other provision of the Code.

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

Sincerely yours,

Joseph H. Makurath

For/ Christine E. Ellison
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