Internal Revenue Service

Index No.: 2511.03-00

Number: **199945012**
Release Date: 11/12/1999

Department of the Treasury

Washington, DC 20044

Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:P&SI:7 - PLR-118033-98
Date:

August 4, 1999

LEGEND:

A	=
a	=
Daughter	=
b	=
c	=
d	=
e	=
Taxpayer	=
f	=
g	=
h	=
i	=
j	=
k	=

State =

Dear Sir:

In a letter dated, , you requested rulings concerning the gift and generation-skipping transfer (GST) tax consequences of a proposed disclaimer. This letter responds to your request.

The information submitted and representations made are summarized as follows: A died testate on a, prior to January 1, 1977. A was survived by Daughter and b other children. Item II(2)(a) of A's will places c percent of A's residuary estate into a trust for the benefit of A's descendants. The trustee is to divide the trust corpus into as many separate and equal trusts as A has children living at A's death and deceased children with descendants then living.

Item II(2)(b) of A's will provides that one of the trusts is to be held for each then living child and the descendants of that child. The trustee is to distribute that part of the income and/or corpus of a child's trust to and among the child and the descendants of the child in the manner and proportion that the trustee deems best to provide for the proper support of the child and the proper support and education of the child's descendants, taking into account any other means they may have, and for any other purpose that the trustee may deem to be in the best interest of the child and the child's descendants. Any income not distributed is to be added to principal. The child is to have the power at any time and from time to time, by instrument in writing signed by the child and delivered to the trustee or by his or her last will and testament, to direct that any part of the child's trust be delivered to or among such of A's descendants (other than the child), and in such manner, in trust or otherwise, as the child may so direct or appoint.

Daughter died testate on d, survived by e children, one of whom is Taxpayer. In §1.05 of her will, Daughter exercised the power of appointment granted to her under Item II(b) of A's will and appointed the undistributed income and principal from the trust created under A's will for Daughter's benefit (Daughter's Trust) to the trustee to be divided and distributed in the manner provided in Section 5 of her will.

Section 5.01 of Daughter's will directs the trustee to divide Daughter's Trust into as many equal shares as there are children of Daughter then living and children of Daughter who are deceased with descendants then living. Each share set aside for the descendants of a deceased child is to be further divided into shares for the descendants by right of representation.

Section 5.02(a) of Daughter's will provides that the trustee is to pay to or for the benefit of the child for whose benefit a separate trust has been established during the child's lifetime, in monthly or other convenient installments (but not less frequently than annually) the entire net income of the trust.

Section 5.02(b) of Daughter's will provides that in addition to paying or applying the net income, the trustee may pay to or apply for the child's benefit as much of the principal of the trust, up to the whole thereof, as the trustee in the trustee's discretion considers necessary for the child's proper health, maintenance, and support, including invalidism, taking into consideration, to the extent the trustee considers advisable, any other income or resources of the child made known to the trustee and reasonably available for these purposes.

Section 5.02(c) of Daughter's will provides that following the child's death, the undistributed income and principal of the trust, together with any property added to the trust, is to be distributed to the child's descendants by right of representation. Each share is to be distributed to the descendant free of trust if the descendant has reached age f. Each share set aside for a descendant who has not reached age f is to be retained in a separate trust by the trustee.

It is represented that Taxpayer's legal advisor obtained copies of A's will and Daughter's will in g. On h, Taxpayer's legal advisor, by telephone, explained to Taxpayer the provisions of Daughter's will. It is further represented that prior to h, Taxpayer had no notice or knowledge of the provisions of Daughter's will, A's will, or the trusts created under A's will and Daughter's will. It is represented as well that while Daughter was living, all Taxpayer's efforts to discuss Taxpayer's inheritance were met with an irate response and no information was divulged.

On i, Taxpayer executed a disclaimer, disclaiming f percent of the property transferred to Taxpayer's Trust by Daughter's testamentary exercise of her power of appointment. The effective date of the disclaimer is j, or, if later, k days after the issuance by the Internal Revenue Service of a favorable private letter ruling confirming that the disclaimer is not a taxable gift under chapter 12 of the Internal Revenue Code and that no tax will be incurred under chapter 13 as a result of the disclaimer. A favorable ruling other than with respect to the factual determination as to the time that Taxpayer acquired knowledge about Taxpayer's interest in the property subject to the disclaimer will nevertheless be considered a favorable ruling for purposes of the effective date of the disclaimer.

It is represented that the disclaimer was delivered to the trustee on i. It is furthered represented that Taxpayer neither received nor accepted any benefits from Taxpayer's Trust prior to the execution of the disclaimer. It is represented as well that under the terms of Taxpayer's Trust, the disclaimed property will pass to Taxpayer's children. Taxpayer has reserved no powers over the disclaimed property or over any of the terms of the disclaimer.

It is further represented that the trusts created under A's will were irrevocable on September 25, 1985, and there have been no additions (actual or constructive) to them since that date.

It is represented as well that under the terms of the trusts created under Daughter's will, each trust will terminate on the lapse of the 21 years following the death of the last life in being at the time of the creation of the trusts established under A's will. Because all of Daughter's children were lives in being on the date of the creation of the trusts established under A's will, the trusts established under Daughter's will will terminate within the perpetuities period applicable to the trusts established under A's will. Therefore, Daughter's testamentary exercise of the power of appointment will not postpone or suspend the vesting, absolute ownership or power of alienation of an interest in property for a period beyond the rule against perpetuities measured from the creation of the trusts established under A's will.

You have requested the following rulings:

(1) Neither the disclaimer nor the transfer of property pursuant to the disclaimer constitutes a taxable gift by Taxpayer because Taxpayer made an effective disclaimer with a reasonable time after acquiring knowledge of the existence of the transfer within the meaning of § 25.2511-1(c)(2) of the Gift Tax Regulations.

(2) Taxpayer's trust is exempt from the GST tax. Accordingly, the disclaimer will not result in the imposition of the GST tax.

Gift Tax Ruling:

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

Section 2511(a) provides that the tax imposed by § 2501 applies 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) provides 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 facts to the contrary, if a person fails to refuse to accept a transfer within a reasonable time after learning of the existence of the transfer, he will be presumed to have accepted the property. Where the local law does not permit such a refusal, any disposition by the beneficiary, heir, or next-of-kin whereby ownership is transferred gratuitously to another constitutes the making of a gift by the beneficiary, heir, or next-of-kin. In any case where the refusal is purported to relate to only a part of the property, the determination of whether or not there has been a complete an unqualified refusal to accept ownership will depend on all the facts and circumstances in each particular case, taking into account the recognition and effectiveness of such a purported refusal under the local law.

State law provides that if, as a result of a disclaimer or transfer, the disclaimed or transferred interest is treated pursuant to the provisions of Title 26 of the United States Code, as now or hereafter amended, or any successor statute thereto, and the regulations promulgated thereunder, as never having been transferred to the beneficiary, then the disclaimer or transfer is effective as a disclaimer.

The Supreme Court has recognized that, under § 25.2511-1(c)(2), an interest must be disclaimed within a reasonable time after the disclaimant obtains knowledge of the transfer creating the interest to be disclaimed, rather than 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 was made within a reasonable time after Taxpayer obtained knowledge of the existence of the transfer. Accordingly, provided that Taxpayer's disclaimer is valid under State law and provided that the other requirements of § 25.2511-1(c)(2) are satisfied, Taxpayer will not be treated as having made a taxable gift.

Generation-Skipping Transfer Tax Ruling:

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)(B) provides that the release, exercise, or lapse of a power of appointment (other than a general power of appointment as defined in § 2041(b)) is not treated as an addition to a trust if--

(1) Such power of appointment was created in an irrevocable trust that is not subject to chapter 13 under § 26.2601-1(b)(1); and

(2) In the case of an exercise, the power of appointment is not exercised in a manner that may postpone or suspend the vesting, absolute ownership or power of alienation of an interest in property for a period, measured from the date of creation of the trust, extending beyond any life in being at the date of creation of the trust plus a period of 21 years plus, if necessary, a reasonable period of gestation (the perpetuities period). For purposes of § 26.2601-1(b)(1)(v)(B)(2), the exercise of a power of appointment that validly postpones or suspends the vesting, absolute ownership, or power of alienation of an interest in property for a term of years that will not exceed 90 years (measured from the date of creation of the trust) will not be considered an exercise that postpones or suspends vesting, absolute ownership, or the power of alienation beyond the perpetuities period. If a power is exercised by creating another power, it is deemed to be exercised to whatever extent the second power may be exercised.

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.

Section 2612(c)(1) defines the term "direct skip" to mean a transfer subject to a tax imposed by chapter 11 or 12 of an interest in property to a skip person.

Section 2613(a) defines the term "skip person" to mean --

(1) a natural person assigned to a generation that is two or more generations below the generation assignment of the transferor, or

(2) a trust --

(A) if all interests in such trust are held by skip persons, or

(B) if --

(i) there is no person holding an interest in the trust, and

(ii) at no time after such transfer may a distribution (including distributions on termination) be made from such trust to a non-skip person.

Based on the information submitted and the representations made, we conclude that Taxpayer's Trust is exempt from the GST tax. Accordingly, the disclaimer will not result in the imposition of 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(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, we are sending a copy of this letter to Taxpayer.

Sincerely yours,

Joseph H. Makurath

Joseph H. Makurath
Senior Technician Reviewer, Branch 7
Office of the Assistant Chief Counsel
(Passthroughs and Special Industries)