

Internal Revenue Service

Department of the Treasury

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Person to Contact:
Telephone Number:

Refer Reply To:
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Date:
October 22, 1999

Re :

Legend

Decedent	=	
		E.I.N. :
Spouse	=	
Child A	=	
Date 1	=	
Date 2	=	
Trust	=	
<u>X</u>	=	
<u>Y</u>	=	
<u>Z</u>	=	
State X	=	
Applicable State Law	=	

Dear :

This is in response to your letter dated October 21, 1999, and prior correspondence, in which you requested several ruling concerning the application of § 2518 of the Internal Revenue Code to proposed disclaimers.

Decedent, a resident of State X, died on Date 1, survived by Spouse. Under the terms of Decedent's will, executed on Date 2, Decedent's residuary estate passed to a revocable trust (Trust) also created on Date 2. Decedent and Spouse were co-settlors of the Trust.

Under Article III of the Trust, during the life of the settlors, the trustee is to pay to the settlors all the trust income in convenient installments in accordance with any written or oral instructions that settlors may furnish regarding the frequency or method of payments. Also, during the life of the settlors, the trustee shall pay to them or for their benefit any part or parts or all of the principal of the trust estate and any accumulated income in accordance with the terms of any written or

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oral instruction that settlors may furnish to the trustee (only if either settlor is not a trustee) regarding the method or amount of such payments. In the event either settlor is not a trustee, oral instructions are to be confirmed by the trustee in writing sent to the settlors. At any time during the life of settlors that they fail to furnish trustee with current written or oral instructions concerning payments of net income or principal to or for their benefit, then the trustee has discretion to pay trust income and principal, as the trustee determines to be necessary or advisable to provide for settlors' health, support, and maintenance.

Article V provides that either of the settlors may act on behalf of this trust, either jointly or severally.

Article XIII.A provides that the settlors reserve the power to withdraw property from the trust in any amount and at any time upon giving reasonable notice in writing to the trustee.

During the lifetime of the settlors, the trust may be revoked by the settlors "jointly", or by their personal representatives, or by the survivor of them. Upon the death of the survivor of Decedent and Spouse, the trust is to terminate and the property distributed outright to the Decedent and Spouse's three children. If a child dies before termination and is survived by issue, the issue of the deceased child will receive the share of the deceased child, per stirpes. Decedent and Spouse were initial co-trustees of Trust.

Prior to the death of Decedent, Child A succeeded Spouse as co-trustee of the Trust. After the death of Decedent, Child A became the sole trustee. Since the death of Decedent, Child A has also handled the personal affairs of Spouse.

On the date of Decedent's death, the Trust held one asset, an investment account with a brokerage firm valued at X dollars. It is represented that Decedent and Spouse contributed equally to this account.

Decedent and Spouse also owned jointly two Treasury Direct Accounts holding a variety of U.S. Treasury Bills valued at Y dollars. These accounts were held in the form "[Decedent] or [Spouse]". In addition, Decedent and Spouse owned jointly three bank accounts (savings, checking, and money market) with a combined value of Z dollars. It is represented that Decedent and Spouse contributed equally to the Treasury Direct Accounts and the three joint bank accounts.

Prior to the Decedent's death, the earnings from the investment account and Treasury Direct Accounts were

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automatically deposited into either the savings account or the money market account. For a short period after Decedent's death, these automatic deposits continued. Additionally, other deposits (pension, Social Security, and proceeds from the sale of three securities held in the investment account) were made to the three bank accounts. Child A, used some of the funds in the three accounts to pay certain expenses of the Spouse and Decedent's estate. It is represented that the amount withdrawn from the three accounts after Decedent's death was Z dollars (the amount held in these accounts at the date of the Decedent's death). Thus, an amount equal to funds automatically deposited into the accounts from the Treasury Direct Accounts and investment account after Decedent's death, or any of the funds deposited into the three bank accounts after Decedent's death, was retained in the accounts.

Subsequent to Decedent's death, the Trust investment account and the Treasury Direct Accounts have been divided into equal accounts and the automatic deposits into the three bank accounts have been canceled. Furthermore, no distributions have been made from the share attributable to Decedent's one-half interest in the Trust investment account or one-half interest in the Treasury Direct Accounts. Distributions have been made from the accounts funded with Spouse's one-half share.

Spouse proposes to disclaim within 9 months of Decedent's death one-half of the Treasury Direct Accounts and one-half of the funds in the bank accounts attributable to Decedent's one-half interest in the Treasury Direct Accounts and Trust investment account (plus any income earned in the bank accounts attributable to this property). Spouse will also disclaim her powers to withdraw or appoint Trust assets and her power to amend or revoke the Trust as to the Decedent's one-half interest in the Trust investment account, and any other property passing to the Trust as a result of the above disclaimers. The trustee will segregate the property subject to the disclaimer and administer the property separately.

Under Applicable State Law governing disclaimers, a person to whom any property devolves by whatever means may disclaim such property. The property may be disclaimed regardless of whether it passes under a testamentary instrument, by intestacy or under a nontestamentary instrument or contract. A surviving joint tenant may disclaim as a separate interest any property interest passing to the surviving joint tenant by right of survivorship. Also, under Applicable State Law, the disclaimant is treated as predeceasing the decedent with respect to the disclaimed property. Consequently, in the instant case, as a result of Spouse's disclaimers, the disclaimed interest in the Treasury Direct Accounts and the bank accounts will pass through

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Decedent's probate estate to Trust.

You have requested the following rulings:

1. The Spouse's proposed disclaimer of her powers to withdraw or appoint trust assets and her power to amend or revoke the trust as to the Decedent's one-half interest in the investment account, and any other property passing to the trust as a result of the disclaimers (described below), will be a qualified disclaimer under § 2518.

2. The Spouse's proposed disclaimer of one-half of the Treasury Direct Accounts and one-half of the funds deposited in the bank accounts after Decedent's death, attributable to Decedent's one-half interest in the Treasury Direct Accounts and Trust investment account (plus any income earned in the bank accounts attributable to this property) will be a qualified disclaimer under § 2518.

Section 2046 provides that disclaimers of interests passing upon death are treated for federal estate tax purposes as provided by § 2518. Section 2518 sets forth the requirements that must be met for a disclaimer to be treated as qualified for federal gift tax purposes.

Section 2518(a) provides that if a person makes a qualified disclaimer with respect to any interest in property, then for purposes of the federal estate, gift and generation-skipping transfer tax, such interest will be 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) such refusal is in writing;

(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 relates not later than the date that is 9 months after the later of the date on which the transfer creating the interest in such person is made, or the day that the 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 to the spouse of the decedent, or to a person other

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than the person making the disclaimer.

Section 25.2518-1(b) of the Gift Tax Regulations provides, in part, that if a person makes a qualified disclaimer, then 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 transferrer of the property to the person entitled to receive the property as a result of the disclaimer. Accordingly, a person making a qualified disclaimer is not treated as making a gift.

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 the 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 property. Acts indicative of acceptance include using the property or the interest in 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, merely taking delivery of an interest or title, without more, does not constitute acceptance. Moreover, a disclaimant is not considered to have accepted property merely because, under applicable local law, title to the property vests immediately in the disclaimant upon the death of the decedent.

Section 25.2518-2(e)(1) provides that a disclaimer is not a qualified disclaimer unless the disclaimed interest passes without direction on the part of the disclaimant to a person other than the disclaimant (except if the disclaimant is the decedent's surviving spouse). If there is an express or implied agreement that the disclaimed interest in property is to be given or bequeathed to a person specified by the disclaimant, the disclaimant is to be treated as directing the transfer of the property interest. A disclaimer is not a qualified disclaimer 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 the disclaimed property passes to or for the benefit of the disclaimant as a result of the disclaimer (except in the case of a disclaimer by the surviving spouse).

Section 25.2518-2(e)(2) provides that in the case of a disclaimer made by a decedent's surviving spouse with respect to property transferred by the decedent, the disclaimer satisfies the requirements of § 25.2518-2(e) if the interest passes as a result of the disclaimer without direction on the part of the

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surviving spouse either to the surviving spouse or to another person.

Section 25.2518-3(a)(1)(i) provides that if the requirements of the section are met, 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.

Section 25.2518-3(a)(1)(iii) provides that a power of appointment with respect to property is treated as a separate interest in such property and such power of appointment with respect to all or any undivided portion of such property may be disclaimed independently from any other interest separately created by the transferor in the property if the requirements of § 2518(b) are met. Further, a disclaimer of a power of appointment with respect to property is a qualified disclaimer only if any right to direct the beneficial enjoyment of the property which is retained by the disclaimant is limited by an ascertainable standard.

Section 25.2518-2(c)(4)(iii) provides that in the case of a transfer to a joint bank, brokerage, or other investment account (e.g. an account held at a mutual fund), if a transferor may unilaterally regain the transferor's own contributions to the account without the consent of the other cotenant, such that the transfer is not a completed gift under § 25.2511-1(h)(4), the transfer creating the survivor's interest in the decedent's share of the account occurs on the death of the deceased cotenant. Accordingly, if a surviving joint tenant desires to make a qualified disclaimer with respect to funds contributed by a deceased cotenant, the disclaimer must be made within 9 months of the cotenant's death. The surviving joint tenant may not disclaim any portion of the joint account attributable to consideration furnished by the surviving joint tenant.

In the instant case, with respect to the investment account held in Trust, it is represented that Decedent and Spouse contributed equally to the account. Under the terms of Trust, Decedent retained the right to withdraw his one-half contribution without having to account to Spouse for the withdrawal. Further, as it pertains to Decedent's one-half interest in the Trust, Spouse's power to withdraw or appoint trust assets and her power to amend or revoke the Trust, effectively constitute a lifetime power of appointment, that is treated as a separate interest in the Trust in accordance with § 25.2518-3(a)(1)(iii). Accordingly, we conclude that Spouse's disclaimer of her powers to withdraw or appoint Trust assets and to amend or revoke the

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Trust as to Decedent's one-half interest in the Trust and the assets passing to the Trust as a result of Spouse's other disclaimers (described below), will constitute a qualified disclaimer, if the proposed disclaimer is in writing and delivered within 9 months of the Decedent's date of death.

With respect to the Treasury Direct Accounts, we note that the accounts were titled in the form Decedent "or" Spouse and under applicable Treasury Regulations, Decedent could unilaterally withdraw his contributions to the accounts. See 31 C.F.R. § 357.21(b)(2)(ii). Further, in view of the disclaimers with respect to Spouse's powers in Trust, noted above, Spouse will not retain any power to direct the disposition of the disclaimed property. Accordingly, we conclude that Spouse's disclaimer of one-half of the Treasury Direct Accounts, will constitute a qualified disclaimer under § 2518 assuming the disclaimer is in writing and delivered within 9 months of Decedent's death as required under § 2518(b). Similarly, we conclude that the Spouse's disclaimer of the deposits made to the three joint accounts after Decedent's death attributable to Decedent's share of the Treasury Direct Accounts and Trust investment account will constitute a qualified disclaimer under § 2518 assuming the disclaimer is in writing and delivered within 9 months of Decedent's death as required under § 2518(b).

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 the taxpayer.

Sincerely,
Assistant Chief Counsel
(Passthroughs and Special
Industries)

By _____
George L. Masnik
Chief, Branch 4

Enclosure
Copy for 6110 purposes