

Internal Revenue Service

Department of the Treasury

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Person to Contact:

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Date:

April, 26, 2000

Legend:

Decedent:

A:

B:

C:

Estate of
Decedent:

Estate of A:

Court:

Date 1:

Date 2:

Date 3:

Date 4:

a:

b:

c:

Dear . :

This is in response to a letter dated December 7, 1999, submitted by the

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executor of the Estate of Decedent requesting a ruling that concerns a disclaimer under § 2518 of the Internal Revenue Code.

Decedent died testate on Date 1; and A, Decedent's wife, died testate on Date 2.

Paragraph Third of the Decedent's will creates a credit shelter trust.

Paragraph Third (a) provides that, during the lifetime of A, the trustee is to pay to or apply for the benefit of A the entire net income of the credit shelter trust in at least monthly installments.

Paragraph Third (b) provides for the invasion of the corpus of the credit shelter trust by the trustee on behalf of A during A's lifetime. The trustee's power to invade the corpus of the credit shelter trust is limited by an ascertainable standard relating to the health, education, support, or maintenance of A.

Paragraph Third (c) provides that, upon the death of A, the trustee is to pay one half of the corpus of the credit shelter trust to B and the other one half of the corpus to C. If B does not survive both A and Decedent, the entire corpus of the credit shelter trust is to be paid to C.

Paragraph Fourth of the Decedent's will provides that, if A survives Decedent, all the residue and remainder of the property owned by Decedent at his death is to be devised and bequeathed to A. If A makes a qualified disclaimer of a portion or all of the gift under Paragraph Fourth, all of the Decedent's residuary estate or the part so disclaimed is to be devised and bequeathed to the trustee of the trust created under Paragraph Third of the Decedent's will.

Under Paragraph Fourth of the Decedent's will, an amount equal to \$a was transferred, prior to Date 3, in four separate transfers from the Estate of Decedent to the Estate of A. On Date 3, pursuant to an order by Court authorizing the disclaimer by the executor of the Estate of A, the executor of the Estate of A transferred an amount equal to \$b, which included the disclaimed amount, \$c, and the income earned on the disclaimed amount, from the Estate of A to the Estate of Decedent. On Date 4, which was within a 9 month period beginning Date 1, the executor of the Estate of A disclaimed in writing an amount equal to \$c of the residuary bequest under Paragraph Fourth of the Decedent's will and all the income earned on the \$c. The written disclaimer was delivered to the executor of the Estate of Decedent on the same day.

The executor of the Estate of Decedent has requested a ruling that the disclaimer made by the executor of the Estate of A of \$c of the residuary bequest under the Decedent's will and the income earned on the \$c is a qualified disclaimer under § 2518 of the Internal Revenue Code.

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Section 2046 states that § 2518 provides provisions relating to the effect of a qualified disclaimer for purposes of the estate tax.

Section 2518(a) provides that, for purposes of this subtitle, if a person makes a qualified disclaimer with respect to any interest in property, this subtitle shall apply with respect to such interest as if the interest had never been transferred to such person.

Section 2518(b) provides that, for purposes of § 2518(a), the term “qualified disclaimer” means 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, his legal representative, or the holder of the legal title to the property to which the interest relates not later than the date which is 9 months after the later of --

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

(B) the date on which such 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 --

(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) of Gift Tax Regulations provides in part that, with respect to transfers made by a decedent at death or transfers that become irrevocable at death, the transfer creating the interest occurs on the date of the decedent’s death, even if an estate tax is not imposed on the transfer.

Section 25.2518-2(d)(1) provides in part that a qualified disclaimer cannot be made with respect to an interest in property if the disclaimant has accepted the interest in property or any of its benefits, expressly or impliedly, prior to making the disclaimer. Acceptance is manifested by an affirmative act which 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 property. However, merely taking delivery of an instrument of title, without more, does not constitute

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acceptance.

Section 25.2518-2(e)(1) provides in part that a disclaimer is not a qualified disclaimer unless the disclaimed interest passes without any direction on the part of the disclaimant to a person other than the disclaimant (except as provided in § 25.2518-2(e)(2)). 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 shall be treated as directing the transfer of the property interest. The requirements of a qualified disclaimer under § 2518 are not satisfied if –

(i) 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 has the power to direct the redistribution or transfer of the property or interest in property to another person unless such power is limited by an ascertainable standard); or

(ii) The disclaimed property or interest in property passes to or for the benefit of the disclaimant as a result of the disclaimer (except as provided in § 25.2518-2(e)(2)).

Section 25.2518-2(e)(2) provides in part 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 requirement of the disclaimer of § 25.2518-2(e) if the interest passes as a result of the disclaimer without direction on the part of the surviving spouse either to the surviving spouse or to another person. If the surviving spouse, however, retains the right to direct the beneficial enjoyment of the disclaimed property in a transfer that is not subject to Federal estate and gift tax (whether as trustee or otherwise), such spouse will be treated as directing the beneficial enjoyment of the disclaimed property, unless such power is limited by an ascertainable standard.

Based on the information submitted and the representations made, we conclude that the disclaimer made by A's executor satisfies the requirements of § 2518 because: (1) the disclaimer is in writing and is timely made; (2) the management by A's executor of the property bequeathed from Decedent to A does not constitute an acceptance; and (3) the disclaimed portion of A's interest in the bequeathed property passes without any direction on the part of A. Therefore, the disclaimer made by A's executor of \$c of the residuary bequest under the Decedent's will and the income earned on the \$c is a qualified disclaimer under § 2518.

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

This letter ruling is directed only to the taxpayer who requested it. Section

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6110(k)(3) provides that it may not be used or cited as precedent.

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

Enclosure: Copy for § 6110 purposes