

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:P&SI:4-PLR-104525-00
Date:

June 29, 2000

Re:

LEGEND

Settlor =

Trust =

Corporate Fiduciary =

Fiduciary =

Corporate Executor =

Decedent =

Taxpayer =

d1 =

d2 =

d3 =

d4 =

d5 =

d6 =

d7 =

Dear :

This is in response to the May 9, 2000 letter and other correspondence requesting a ruling that Taxpayer's disclaimer of the remainder interest in Trust under Pennsylvania law will not constitute a taxable transfer of that interest under section 2511 of the Internal Revenue Code.

The information submitted and representations made are as follows.

Settlor, Decedent's parent, created the Trust, an irrevocable trust, on d1, prior to October 21, 1942, and designated herself and Corporate Fiduciary as the trustees. Taxpayer and Decedent were married on d2.

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Pursuant to the Trust, after Decedent attained age 30 on d3, all Trust income was paid to Decedent for his life. In addition, the trustees were authorized to distribute to Decedent so much or all of the principal as they deemed proper and for Decedent's best interest.

The Trust instrument provides that, if Decedent died prior to termination of the Trust, the Trust would terminate at his death, and the trustees were to distribute the Trust property to such person or persons as Decedent, by last will and testament, appointed. In default of appointment, the trustees were to distribute the Trust property to "such persons as would inherit the same under the intestate laws of Pennsylvania, had [Decedent] died seized thereof in his own right." On d4, in an instrument effective under state law, Decedent released his power to appoint the Trust property at his death. Therefore, the Trust property remaining at Decedent's death was to pass to his heirs at law.

In this case, d1, d2, d3, and d4 predate January 1, 1977. The Trust continued for Decedent's life, and he received all of the Trust income. Decedent died on d5. His heirs at law consisted of Taxpayer and Decedent's three adult children. On Decedent's death, each became entitled to receive a portion of the Trust property.

During Decedent's life, the quarterly income checks were drawn to Decedent's order and sent to Decedent's office. These, and the check for the quarter in which Decedent died, were deposited by an employee into a joint account held by Decedent and Taxpayer. Over the years, the income from the Trust was reported on the joint income tax returns filed by Decedent and Taxpayer.

When the check for the quarter following Decedent's death was received, the Corporate Executor administering Decedent's estate informed Successor Corporate Trustee of receipt of the funds and the deposit of the earlier check for the quarter in which Decedent died. The check for the quarter following Decedent's death was returned to Successor Corporate Trustee, and the portion of the funds received that represented income accruing after Decedent's death was also refunded to Successor Corporate Trustee.

In a letter to Corporate Executor dated d6, Successor Corporate Trustee enclosed the documents creating the Trust. Thereafter, on d7, Corporate Executor informed Taxpayer of her remainder interest in the Trust. Taxpayer represents that, after her marriage to Decedent, she knew that he received income from the Trust, but prior to d7 she otherwise had no knowledge of the terms of the Trust, of Decedent's d4 release of his general power of appointment, or that she was a contingent remainder beneficiary of the Trust as an heir at law of Decedent under the intestate laws of Pennsylvania.

Taxpayer proposes to execute a disclaimer in which she will irrevocably disclaim

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the remainder interest and any other interests she may have under the Trust. She will execute the disclaimer within nine months from d7.

You have asked us to rule as follows:

(1) Taxpayer's disclaimer of the remainder interest will be made within a reasonable time after knowledge of the existence of the transfer for purposes of § 25.2511-1(c)(2).

(2) Taxpayer's disclaimer of her interest in the Trust will not constitute a taxable gift under section 2501.

(3) Property transferred to Settlor's grandchildren (i.e., Decedent's children) as a result of Taxpayer's disclaimer will not be subject to the generation-skipping transfer tax.

Under applicable state law, a person to whom an interest in property would have devolved by whatever means may disclaim it in whole or in part by a written disclaimer which shall: (1) describe the interest disclaimed; (2) declare the disclaimer and extent thereof; and (3) be signed by the disclaimant. 20 Pa.Cons.Stat. § 6201 (1999).

In addition, unless a donor or testator has provided for another disposition, the disclaimer shall, for purposes of determining the rights of other parties, be equivalent to the disclaimant having died before the decedent in the case of a devolution by will or intestacy or before the effective date of an inter vivos transfer. 20 Pa.Cons.Stat. § 6205 (1999). A disclaimer may be made at any time before acceptance. The mere lapse of time with or without knowledge of the interest on the part of the disclaimant shall not constitute an acceptance. 20 Pa.Cons.Stat. § 6206 (1999).

GIFT TAX RULING:

Section 2501 imposes a tax, for each calendar year, on the transfer of property by gift by any individual.

Section 2511 provides that the tax imposed by section 2501 shall apply 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) of the Gift Tax Regulations 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 the property transferred from a decedent, a refusal to accept ownership does not constitute the making of a gift if the refusal is made within a reasonable time

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after knowledge of the existence of the transfer. The refusal must be unequivocal and effective under the local law.

The Supreme Court has recognized that, under the predecessor to this regulation, an interest must be disclaimed within a reasonable time after obtaining knowledge of the transfer creating the interest to be disclaimed, rather than within 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 made within 9 months of d7 will be made within a reasonable time after Taxpayer obtained knowledge of the existence of the transfer and her interest in the Trust. Accordingly, provided that Taxpayer's disclaimer is valid under Pennsylvania law and assuming the other requirements of § 25.2511-1(c)(2) are met, Taxpayer's disclaimer will not constitute a gift under section 2501.

GENERATION SKIPPING TRANSFER TAX RULING:

Section 2601 imposes a tax on every generation-skipping transfer.

Under §1433(b)(2)(A) of the Tax Reform Act of 1986 and § 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations, the tax does not apply to any generation-skipping transfer under a trust (as defined in section 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) (relating to powers retained by the settlor that would cause the trust to be included in the settlor's gross estate under § 2038) or (C) (relating to life insurance policies includible in the insured's gross estate under § 2042), any trust in existence on September 25, 1985 is considered an irrevocable trust.

Based on the information submitted and the representations made, we conclude that the Trust was irrevocable on September 25, 1985, and no post-September 25, 1985, additions have been made to the Trust. Accordingly, the Trust is exempt from the generation-skipping transfer tax. As discussed above, assuming Taxpayer executes the disclaimer as proposed, the disclaimer will not constitute a gift subject to federal gift tax. Accordingly, Taxpayer's disclaimer will not result in the imposition of the generation-skipping transfer 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.

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

Sincerely yours,

Assistant Chief Counsel
(Passthroughs and Special Industries)

By _____
George L. Masnik
Chief, Branch 4

Enclosure
copy for 6110 purposes