

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact:

Telephone Number:

Refer Reply To:

**CC:PSI:B04 – PLR-162371-03**

Date: JUNE 21, 2004

Re:

Legend:

- Grantor =
- Spouse =
- Date 1 =
- \$W =
- \$X =
- \$Y =
- \$Z =
- Trust =
  
- Trust 2 =
- Trust 3 =
- Trust 4 =
- Trust 5 =
- State Statute =

Dear :

This is in response to your letter dated October 23, 2003 requesting rulings on proposed disclaimers. This letter responds to your request. The facts and representations submitted are summarized as follows: On Date 1, Grantor established an irrevocable trust (Trust), for the benefit of Spouse and descendants.

Article First of Trust creates the (the "Initial Trust"). The Initial Trust provides that the principal is to be held in trust for the benefit of Spouse. During the terms of the Initial Trust, Spouse will receive all income from the Initial Trust and the trustee has the absolute discretion to distribute principal to Spouse. The Initial Trust terminates nine months after the date of the

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first contribution to Initial Trust. At termination, the principal will be distributed to Spouse, if she is then living, or if she is not then living, the principal will be distributed to Spouse's estate. The Initial Trust was funded with \$W.

The trust agreement contemplates a series of disclaimers. Paragraph A of Article Second provides that if Spouse disclaims any of her interest in the Initial Trust, the portion disclaimed will be held in Trust 2 under Article Third.

Paragraph B of Article Second provides that If Spouse disclaims any of her interest under Article Third in Trust 2, that portion will be held in further trust under Article Fourth in Trust 3.

Paragraph C of Article Second provides that if Spouse further disclaims any of her interest under Trust 3, that portion will be held in further trust under Article Fifth in Trust 4.

Paragraph D of Article Second provides that If she disclaims any of her interest under Article Fifth in Trust 4, that portion will be held in further trust under Article Sixth in Trust 5.

Both Trust 2 and Trust 3 provide for income to Spouse (payable at least quarterly) during her lifetime. In addition principal is payable to Spouse in the trustee's sole discretion. Spouse has the right to make any unproductive property productive. Both trusts terminate on Spouse's death and the principal is divided into separate shares for the Grantor's then living issue per stirpes.

Trust 4 and Trust 5 provide for income and principal to Spouse and Grantor's living issue at the trustee's discretion. Both trusts, if not terminated sooner, terminate on Spouse's death and the principal is to be divided into separate shares for the Grantor's then living issue per stirpes.

Spouse intends to execute the following series of disclaimers within nine months of Date 1, the date of the creation of Trust.

Pursuant to Article Second, Spouse will irrevocably and unqualifiedly renounce and disclaim all of her interest under paragraph A of Article First (Initial Trust) and the \$W will be disposed of as provided in Article Third.

Pursuant to paragraph B of Article Second, Spouse will irrevocably and unqualifiedly renounce her interest in \$X of the trust property under Article Third, and the \$X will be disposed of as provided in Article Fourth of Trust Agreement.

Pursuant to paragraph C of Article Second, Spouse will irrevocably and unqualifiedly renounce her interest in \$Y of the trust property under Article Fourth and the \$Y will be disposed of as provided in Article Fifth of Trust Agreement.

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Pursuant to paragraph D of Article Second of Trust Agreement, Spouse will irrevocably and undeniably renounce her interest in \$Z of trust property under Article Fifth, and the \$Z will be disposed of as provided in Article Sixth of Trust Agreement.

You have requested rulings that the proposed disclaimers are qualified disclaimers under § 2518 of the Internal Revenue Code.

Section 2518(a) provides that, if a person makes a qualified disclaimer of an interest in property, the estate, gift, and generation-skipping transfer tax provisions will apply to that interest as if it had never been transferred to such person.

Under § 2518(b), the term "qualified disclaimer" means an irrevocable and unqualified refusal by a person to accept an interest in property, provided: (1) the disclaimer is in writing; (2) the disclaimer is received by the transferor of the interest, his legal representative, or the holder of legal title to the property, not later than the date which is 9 months after the later of the date on which the transfer creating the interest is made or the date on which the person refusing the interest attains age 21; (3) the person disclaiming the interest has not accepted the interest or any of its benefits; and (4) as a result of the disclaimer, the interest passes without any direction by the person making the disclaimer and passes either to the spouse of the decedent or to a person other than the person making the disclaimer.

Under § 25.2518-1(b) of the Gift Tax Regulations, if a qualified disclaimer is made, the property is treated, for federal gift, estate, and generation-skipping transfer tax purposes, as passing directly from the transferor, and not from the disclaimant, to the person entitled to receive the property as a result of the disclaimer. Thus, the disclaimant is not treated as making a gift.

Under § 25.2518-2(c)(1), the written disclaimer must be delivered no later than the date which is 9 months after the date on which the transfer creating the interest in the disclaimant is made.

Under § 25.2518-2(d)(1), a qualified disclaimer cannot be made with respect to an interest in property if the disclaimant has accepted the interest or any of its benefits, expressly or impliedly, prior to making the disclaimer. Under § 25.2518-2(d)(2), if a beneficiary who disclaims an interest in property is also a fiduciary, actions taken by such person in the exercise of fiduciary powers to preserve or maintain the disclaimed property (e.g., directing the harvesting of a crop, or maintenance of a home) is not treated as an acceptance of such property. However, the fiduciary's disclaimer of a beneficial interest is not a qualified disclaimer if the fiduciary exercised a discretionary power to allocate enjoyment of the interest among members of a class.

Under § 25.2518-2(e)(1), 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, unless the disclaimant is the spouse of a decedent. If there is an express or implied agreement that the disclaimed interest is to be given to a person specified by the disclaimant, the disclaimant will be treated as directing the transfer of the property interest.

State Statute provides, generally, that any beneficiary may renounce all or part of his interest. The renunciation must be in writing, signed by the person renouncing, and filed in the appropriate court within nine months after the effective date of the disposition. The property passes as the creator of the disposition has provided in the instrument. The beneficiary may not make a renunciation with respect to any property he has accepted.

In the present case, Spouse proposes to make a series of disclaimers in her interest in Trust. The disclaimers will be executed in accordance with State Statute. As a result Trust assets will pass to a series of trusts for the benefit of Spouse and Grantor's issue without any direction on the part of Spouse. Accordingly, assuming the other requirements of § 2518 are satisfied, we conclude that the proposed disclaimers will be qualified disclaimers under § 2518 and the property will be treated as passing directly from Grantor according to the terms of Trust.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

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

These rulings are directed only to the taxpayers requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

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Lorraine E. Gardner  
Senior Counsel, Branch 4  
Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures

Copy for section 6110 purposes