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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:4

PLR-116127-05

Date: OCTOBER 21, 2005

DO:

Legend

Estate	=
Decedent	=
Husband	=
Daughter 1	=
Daughter 2	=
Son 1	=
Son 2	=
Son-in-law 1	=
Son-in-law 2	=
Brother 1	=
Brother 2	=
Niece 1	=
Niece 2	=
Nephew-in-law	=
State 1	=
State 2	=
A	=
B	=
C	=
D	=
E	=
F	=
G	=
Date 1	=
Statute 1	=
Statute 2	=
Statute 3	=
Statute 4	=

Statute 5 =
 Statute 6 =
 Statute 7 =
 Statute 8 =
 Statute 9 =
 Statute 10 =
 Statute 11 =
 Statute 12 =
 Statute 13 =
 Statute 14 =
 Statute 15 =
 Statute 16 =
 Statute 17 =
 Court 1 =
 Court 2 =

Dear :

This is in response to your authorized representative's letter, dated April 17, 2005, and prior correspondence, concerning disclaimers made with respect to property included in Decedent's estate.

According to the facts presented, Decedent died intestate on Date 1, a resident of State 1, a community property state. Decedent is survived by her husband (Husband), Daughter 1, Daughter 2, Son 1, and Son 2, five grandchildren (A, B, C, D, and E), Brother 1, Brother 2, Niece 1, Niece 2, and two grandnieces (F and G). Daughter 1 is married to Son-in-Law 1 and their children, A, B, and C, are minors. Daughter 2 is married to Son-in-Law 2 and their children, D and E, are minors. Niece 2 is married to Nephew-in-Law and their children, F and G, are minors.

It is represented that no unborn children who would be descendants of Decedent or Decedent's siblings were conceived at the time of Decedent's death. Daughter 1, Daughter 2, Son 1, and Son 2 are the co-executors of Decedent's estate.

Certain property located in State 1 and State 2 was included in Decedent's estate for federal tax purposes. Decedent had community property interests in some of the property located in State 1 and had separate interests, either solely, or in indivision with her husband or her brothers in property located in State 1 and State 2. The following disclaimers with respect to an undivided interest in the property located in State 1 and State 2 were made within nine months of Decedent's death.

Under the intestacy laws of State 1, Statute 1, Decedent's separate property passed to Decedent's descendants in equal portions and by heads if they are of the same degree and by roots if all or some of them succeed by representation.

Accordingly, because all of Decedent's children survived, each child inherited an undivided one-fourth interest in Decedent's separate property located in State 1. If Decedent leaves neither descendants or parents, Decedent's sibling or their descendants succeed to the property in full ownership to the exclusion of other ascendants and collaterals. Statute 2. Decedent is survived by two siblings, Brother 1 and Brother 2, both of whom have a child and a grandchild. Therefore, if Decedent had no children, her brothers would succeed to Decedent's separate property. If Decedent were not survived by her brothers, her brothers' children would succeed, and if Decedent were not survived by her brother's children, her brother's grandchildren would succeed. If Decedent leaves neither descendants, brothers nor descendants from them, Husband succeeds to Decedent's separate property to the exclusion of other ascendants and other collaterals. Statute 3.

Under the intestacy laws of State 1, Decedent's community property devolves to her children in naked ownership, an equal one-fourth interest each, and a legal usufruct over all community property devolves to her husband. Statutes 1 and 4. The usufruct terminates at the earlier of the husband's death or remarriage. If Decedent leaves no descendants, Husband succeeds to Decedent's share of community property. Statute 5.

Pursuant to State 1 law and within nine months from the date of Decedent's death, Daughter 1; Daughter 2; Son 1; Son 2; A, B, C, D, and E, represented by their legal representative and approved by a court-appointed undertutor; Brother 1; Brother 2; Niece 1; Niece 2; and F and G, represented by their legal representative and approved by a court-appointed undertutor, executed written disclaimers filed with Court 1 disclaiming an undivided interest in the community property and separate property in State 1. Statutes , 6, 7, 8, 9, 10, 11, 12, 13. As a result of these disclaimers, the separate and community property succeeded to Husband. Husband accepted the property.

Under the intestacy laws of State 2, Decedent's property located in State 2 passed to her husband and her children or their descendants in equal parts and if the decedent has no children or descendants with the husband, the property passes to the husband. Statute 14. When an interest in property devolves to a disclaimant under the intestacy laws, the disclaimed interest devolves as if the disclaimant had predeceased the decedent. Statute 15. State 2.

Pursuant to State 2 law and within nine months from the date of Decedent's death, Daughter 1; Daughter 2; Son 1; Son 2; and A, B, C, D, and E, represented by a court-appointed guardian ad litem, executed written disclaimers filed with Court 2 disclaiming an undivided interest in the property in State 2. Statutes 16, 17. As a result of these disclaimers, the property succeeded to Husband. Husband accepted the property.

The following rulings are requested.

1. The disclaimers by Decedent's children, grandchildren, brothers, nieces; and grandnieces are qualified disclaimers for purposes of sections 2518 and 2046;
2. The property that passes to Decedent's surviving spouse as result of these disclaimers will be treated for purposes of the estate tax marital deduction under section 2056(a) as passing directly from the Decedent to the surviving spouse.

Law and Analysis

Section 2518(a) of the Internal Revenue Code provides that, if a person makes a qualified disclaimer with respect to any interest in property, the disclaimed interest will be treated for gift, estate, and generation-skipping transfer tax purposes as if the interest had never been transferred to such person.

Section 2518(b) provides that a "qualified disclaimer" means an irrevocable and unqualified refusal by a person to accept an interest in property, but only if:

- 1) the disclaimer is in writing;
- 2) the disclaimer is received by the transferor of the interest or his legal representative no later than 9 months after the date on which the transfer creating the interest in the person making the disclaimer is made, or the date on which the person making the disclaimer attains age 21;
- 3) the person making the disclaimer has not accepted the interest or any of its benefits; and
- 4) as a result of the disclaimer, the interest passes without any direction on the part of the person making the disclaimer to the decedent's spouse or to a person other than the person making the disclaimer.

Section 25.2518-1(b) of the Gift Tax Regulations provides that, if a qualified disclaimer is made, the disclaimed interest 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.

Under section 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. The requirements of a qualified disclaimer under section 2518 are not satisfied 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 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).

Under section 25.2518-2(e)(3), if a disclaimer made by a person other than the surviving spouse, is not effective to pass completely an interest in property to a person other than the disclaimant because (i) the disclaimant also has a right to receive such property as an heir at law, residuary beneficiary, or by other means, and (ii) the disclaimant does not effectively disclaim these rights, the disclaimer is not a qualified disclaimer with respect to the portion of the disclaimed property which the disclaimant has a right to receive.

Under § 25.2518-3(a)(1), 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.

Under section 2046(a), provisions relating to the effect of a qualified disclaimer for purposes of chapter 11 are found in section 2518. Section 2056(a) provides that for purposes of the tax imposed by section 2001, the value of the taxable estate, except as limited by section 2056(b), is determined by deducting from the value of the gross estate an amount equal to the value of any interest in property which passes or has passed from the decedent to her surviving spouse, but only to the extent that such interest is included in determining the value of the gross estate.

It is represented that all of the disclaimers are in writing, delivered to the co-administrators of Decedent's estate not later than 9 months after Decedent's death, filed with Court 1 in State 1, and Court 2 in State 2, and that the disclaimants have not accepted any of the benefits from the disclaimed property. All of the disclaimers made on behalf of a minor have been approved by the court having jurisdiction over the minor with a guardian ad litem, in State 2, and an undertutor in State 1. It is further represented that all disclaimers are valid under state law. Therefore, based on the facts and representations made, we conclude the disclaimers by Decedent's children, grandchildren, brothers, nieces, and grandnieces are qualified disclaimers for purposes of sections 2518 and 2046. Further, we conclude that the property that passes to Decedent's surviving spouse, Husband, as result of the disclaimers will be treated for purposes of the estate tax marital deduction under section 2056(a) as passing directly from the Decedent to the surviving spouse.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

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.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are 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.

Sincerely,

Lorraine E. Gardner
Senior Counsel
(Passthroughs & Special Industries)

Enclosure (1)

Copy of letter of section 6110 purposes

cc: