

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-116045-99
Date: April 14, 2000

Legend:

Decedent =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Spouse =

Child 1 =

Child 2 =

Child 3 =

Grandchildren =

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Nieces =

Trust =

State =

Dear :

This is in response to your letter dated April 10, 2000, and prior correspondence, in which you requested a ruling that the disclaimers executed and delivered by Spouse, Child 1, Child 2, Grandchildren, and Nieces constituted qualified disclaimers under § 2518(b) of the Internal Revenue Code.

Decedent executed a will on Date 1. Decedent died on Date 2, survived by Spouse, Child 1, Child 2, Child 3, Grandchildren, and Nieces. Decedent's will was admitted to probate on Date 3. At the time of Decedent's death, Grandchildren had no living issue. Under the terms of Decedent's will, the residue of his estate passed to Trust. Trust provides that, at Decedent's death, Trust property is to be divided into a marital trust and a residuary distribution. Decedent was the settlor of a revocable trust (Trust) which was most recently amended on Date 2. Child 1 and Child 2 are serving as trustees of the Trust. Neither Trust nor Decedent's will, as drafted, provide for the distribution of property under the circumstances where the disclaimants predeceased Decedent. Therefore, any disclaimed property passes to Decedent's heirs-at-law according to State law.

The marital trust is to be funded with the smallest fraction of the Trust property sufficient to reduce the total estate tax payable to the smallest amount, after taking into account all allowable credits and deductions available to the Decedent's estate. The marital trust provides Spouse with a lifetime income interest that qualifies as an income interest for life under §2056(b)(7). In addition, trustees are authorized to distribute such amounts from the principal of the marital trust, as trustees deem necessary or advisable, for the Spouse's health, maintenance in reasonable comfort, and best interests.

After funding the marital trust, the remaining Trust property is to be distributed as follows: (a) thirty-five percent (35%) to Child 1, and if Child 1 is not then living to Child 1's descendants then living, per stirpes; (b) thirty-five percent (35%) to Child 2, and if Child 2 is not then living to Child 2's descendants then living, per stirpes; (c) two and one-half percent (2½%) to each of Decedent's eight Grandchildren and two Nieces, and if a Grandchild or Niece is not then living to Grandchild's or Niece's estate; and (d) Five percent (5%), in the sole discretion of trustees, to be distributed among those persons who are providing in-home personal care to Decedent and Spouse and who have provided such care for at least two and one-half (2½)

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years. It is represented that the five percent (5%) residuary distribution of Trust will be made by the trustees to various caregivers and that those interests will not be increased or diminished by the disclaimers. It is also represented that none of the disclaimants have received any distributions from Trust. It is further represented that there is no agreement, expressed or implied, between or among the parties, that any of the disclaimants will be compensated or benefited in any way in consideration for executing the disclaimers.

Child 1 and Child 2 (as both beneficiaries and trustees of Trust), Grandchildren, and Nieces in accordance with the requirements of the laws of State, executed and delivered written disclaimers of some of their respective rights to receive property under Decedent's will, Trust, and State intestacy statute on Date 4. Spouse did not execute a disclaimer of her rights to receive property under Decedent's will and Trust. Spouse only disclaimed her rights under State intestacy law. Child 1 and Child 2 each disclaimed one-third of his interest as a beneficiary of the residuary distribution under paragraph 2.6 of the Trust and one-third of his interest as a remainder beneficiary of the marital trust established under paragraph 2.5 of the Trust.

Spouse, Child 1, Child 2, Grandchildren, and Nieces in accordance with §§ 732.801 and 689.21 of the State Probate Code (pertaining to intestate succession) executed disclaimers of all rights to receive an intestate share of the Decedent's probate estate as an heir at law, to the extent such intestate share includes the disclaimed trust property. Grandchildren and Nieces disclaimed the respective interests that each would be entitled to receive as a result of Child 1's and Child 2's disclaimers. A guardian ad litem was appointed for a minor Grandchild and court approval provided for minor Grandchild to disclaim her respective interest.

Child 1 and Child 2, as trustees, disclaimed the Trust's interest as sole residuary devisee under Decedent's will. Paragraph 4.1(n) of the Trust authorizes the trustees to disclaim any property or any interest in property if, in the discretion of the trustee, such disclaimer is advisable considering the interests of the beneficiaries as a whole.

Child 2, as the agent acting under a Durable Power of Attorney executed by Spouse, disclaimed the intestate share on behalf of Spouse. Section 16 of the Durable Power of Attorney provides that Child 2, as agent, is authorized to execute a disclaimer on behalf of Spouse "... as a beneficiary of any estate or trust, ... if, in the discretion of my agent, such disclaimer is advisable considering all relevant factors."

As a result of the disclaimers executed and delivered, Child 3 became entitled to receive all of the disclaimed trust property as the sole remaining heir at law.

Section 689.21(2)(a)(4) of the State Probate Code provides that a beneficiary may disclaim any interest in property which would pass (unless disclaimed) to the beneficiary as beneficiary of an inter vivos trust.

Under § 689.21(2)(b) of the State Probate Code, a disclaimer may be made for a minor beneficiary by a guardian ad litem if the circuit court having jurisdiction finds that it is in the best interests of those interested in the estate of such beneficiary, and of those who take the beneficiary's interest by virtue of the disclaimer, and not detrimental to the best interests of the

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beneficiary, to make the disclaimer.

Section 689.21(3)(a) of the State Probate Code states that, unless the grantor has provided otherwise by a nontestamentary instrument, the disclaimed interest shall be distributed as if the disclaimant had died immediately preceding the death or other event which causes him or her to become finally ascertained as a beneficiary. Any interest in property disclaimed shall never vest in the disclaimant.

Section 732.801(2)(a)(6) of the State Probate Code provides that a beneficiary may disclaim his or her succession to any interest in property that, unless disclaimed, would pass to the beneficiary by intestate succession or devise, or as beneficiary of a testamentary gift to any nontestamentary trust.

Under § 732.801(2)(b)(1) and (2) of the State Probate Code, a disclaimer may be made for a minor beneficiary by a guardian ad litem if the circuit court having jurisdiction finds that it is in the best interests of those interested in the estate of such beneficiary and of those who take the beneficiary's interest by virtue of the disclaimer, and not detrimental to the best interests of the beneficiary, to make the disclaimer.

Section 732.801(3)(a) of the State Probate Code states that unless the decedent has provided otherwise by will or other appropriate instrument, the disclaimed interest shall be distributed as if the disclaimant had died immediately preceding the death or other event which causes him or her to become finally ascertained as a beneficiary. Any interest in property disclaimed shall never vest in the disclaimant.

Section 732.604(2) of the State Probate Code provides that if the residue is devised to two or more persons and the share of one of the residuary devisees fails "for any reason," his or her share passes to the other residuary devisees, or to the other residuary devisees in proportion to their interests in the residue.

Under § 732.102(1) of the State Probate Code, the intestate share of the surviving spouse is: (a) If there is no surviving lineal descendant of the decedent, the entire intestate estate. (b) If there are surviving lineal descendants of the decedent, all of whom are lineal descendants of the surviving spouse also, the first \$20,000 of the intestate estate, plus one-half of the balance of the intestate estate. Property allocated hereunder to the surviving spouse to satisfy the \$20,000 shall be valued at the fair market value on the date of the decedent's death. (c) If there are surviving lineal descendants, one or more of whom are not lineal descendants of the surviving spouse, one-half of the intestate estate.

Under § 732.103 of the State Probate Code, the part of the intestate estate not passing to the surviving spouse under § 732.102, or the entire intestate estate if there is no surviving spouse, descends as follows: (1) To the lineal descendants of the decedent. (2) If there is no lineal descendant, to the decedent's father and mother equally, or to the survivor of them. (3) If there is none of the foregoing, to the decedent's brothers and sisters and the descendants of deceased brothers and sisters. (4) If there is none of the foregoing, the estate shall be divided, one-half of which shall go to the decedent's paternal, and the other half to the decedent's maternal, kindred in the following order: (a) To the grandfather and grandmother equally, or to the survivor of them. (b) If there is no grandfather or grandmother, to uncles and aunts and

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descendants of deceased uncles and aunts of the decedent. (c) If there is no paternal kindred or if there is no maternal kindred, the estate shall go to such of the kindred as shall survive in the order aforesaid. (5) If there is no kindred of either part, the whole of such property shall go to the kindred of the last deceased spouse of the decedent as if the deceased spouse had survived the decedent and then died intestate entitled to the estate.

Section 2046 provides that, for estate tax purposes, disclaimers of property interests passing upon death are treated as provided in § 2518.

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 to which the transfer relates, not later than the date which is 9 months after the later of the date on which the transfer creating the interest in such person 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.

Section 2518(c) provides that a disclaimer of an undivided portion of an interest which meets the foregoing requirements will be treated as a qualified disclaimer of such portion of the interest.

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(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 any 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. For example, if a disclaimant who is not a surviving spouse disclaims a specific bequest of a fee simple interest, and as a result of the disclaimer, the property passes to a trust in which the disclaimant has a remainder interest, the disclaimer will not be a qualified disclaimer unless the remainder interest is also disclaimed.

Under § 25.2518-3(a)(1)(i), a disclaimer of an undivided portion of a separated interest in property can be a qualified disclaimer. Further, the disclaimer of an undivided portion of an interest in a trust may be qualified if the requirements of § 25.2518-3(b) are satisfied. Under

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§ 25.2518-3(b), an undivided portion of a disclaimant's separate interest in property must consist of a fraction or percentage of every substantial interest or right owned by the disclaimant in such property and must extend over the entire term of the disclaimant's interest for such property.

Section 25.2518-3(c) provides that a disclaimer of a specific pecuniary amount out of a pecuniary or nonpecuniary bequest or gift which satisfies the other requirements of a qualified disclaimer under § 2518(b) and the corresponding regulations is a qualified disclaimer provided that no income or other benefit of the disclaimed amount inures to the benefit of the disclaimant either prior to or subsequent to the disclaimer. Thus, following the disclaimer of a specific pecuniary amount from a bequest or gift, the amount disclaimed and any income attributable to such amount must be segregated from the portion of the gift or bequest that was not disclaimed.

Section 25.2518-2(e)(5), Example (2), describes a situation where D, a resident of State Y, died testate on June 30, 1978. E, an heir at law of D, received specific bequests of certain severable personal property from D. E disclaimed the property transferred by D under the will. The will had no residuary clause and made no provision for the distribution of property in the case of a beneficiary's disclaimer. The disclaimer laws of State Y provide that such property shall pass to the decedent's heirs at law in the same manner as if the disclaiming beneficiary had died immediately before the testator's death. The example concludes that because State Y's law treats E as predeceasing D, the property disclaimed by E does not pass to E as an heir at law or otherwise. Consequently, if the remaining requirements of section 2518(b) are satisfied, E's disclaimer is a qualified disclaimer under section 2518(a).

In § 25.2518-2(e)(5), Example (3), the facts are the same as in Example (2), except that State Y has no provision treating the disclaimant as predeceasing the testator. The example concludes that E's disclaimer satisfies section 2518(b)(4) only to the extent that E does not have a right to receive the property as an heir at law. Had E disclaimed both the share E received under D's will and E's intestate share, the requirement of section 2518(b)(4) would have been satisfied.

In the present case, based on the representations made and the facts presented, we conclude that the disclaimers filed by Spouse, Child 1 and Child 2 (as both beneficiaries and trustees of Trust), Grandchildren, and Nieces satisfied the four requirements under § 2518(b). The first requirement was satisfied because the disclaimers were in writing. The second requirement was satisfied because the disclaimers were delivered, within nine months of Decedent's death, to a fiduciary who holds legal title to the interests to be disclaimed. The third requirement was satisfied because the disclaimants did not and will not accept any of the disclaimed interests or benefits. The fourth requirement was satisfied because the disclaimed property passed to recipients other than the disclaimants and did not pass to any recipient at the direction of the disclaimants.

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.

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

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

Pursuant to Powers of Attorney on file, a copy of this letter is being sent to Spouse, Child 1 and Child 2 (as both beneficiaries and trustees of Trust), Grandchildren, and Nieces.

Sincerely yours,

By: _____
Robert G. Honigman
Acting Assistant to the Branch Chief
Branch 4

Enclosure
Copy for section 6110 purposes