

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-103744-00
Date:
April 25, 2000

Re:

Legend

Decedent =

Taxpayer =

Date 1 =

Date 2 =

Date 3 =

Grandchild 1 =

Grandchild 2 =

Grandchild 3 =

Trustee =

Charity =

Dear :

This is in response to your authorized representative's letter dated February 8, 2000, requesting rulings that Taxpayer's disclaimer with respect to a fractional share of Taxpayer's interest in Trust principal constitutes a valid disclaimer under § 25.2511-1 of the Gift Tax Regulations and does not constitute a gift under § 2501 of the Internal Revenue Code.

Facts

Decedent died testate on Date 1. Pursuant to the terms of Decedent's will, the

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residue of Decedent's estate was distributed to an irrevocable trust (Trust) for the benefit of Decedent's three grandchildren (Grandchild 1, Grandchild 2, and Grandchild 3).

Article Eighth, Section A of Decedent's will provides, generally, that during the trust term two-thirds of the trust income will be distributed for the use and benefit of Grandchild 1 during his life. Upon Grandchild 1's death and until the termination of Trust, the trust income allocated to Grandchild 1 will be used for the benefit of Grandchild 1's issue who are living at each respective date of income distribution. If Grandchild 1 is not survived by any issue, the trustees are directed to pay or apply such income in equal shares for the use and benefit of Grandchild 2 and Grandchild 3, during their respective lives. In the event that either Grandchild 2 or Grandchild 3 shall be deceased or shall thereafter die during the trust term, the trustees are directed to pay or apply the income which such deceased Grandchild would have received, if living, for the use and benefit of the issue of such deceased Grandchild who are living at each respective date of income distribution.

Article Eighth, Section B of Decedent's will provides, generally, that during the trust term the remaining one-third of the trust income will be distributed for the use and benefit of Grandchild 2 during her life. Upon Grandchild 2's death and until the termination of Trust, the trust income allocated to Grandchild 2 will be used for the benefit of Grandchild 2's issue who are living at each respective date of income distribution. If Grandchild 2 is not survived by any issue, the trustees are directed to pay or apply such income in equal shares for the use and benefit of Grandchild 1 and Grandchild 3, during their respective lives. In the event that either Grandchild 1 or Grandchild 3 shall be deceased or shall thereafter die during the trust term, the trustees are directed to pay or apply the income which such deceased Grandchild would have received, if living, for the use and benefit of the issue of such deceased Grandchild who are living at each respective date of income distribution.

Article Eighth, Section F provides that Trust will terminate upon the death of the last to die of Grandchild 1, Grandchild 2, and Grandchild 3. Upon the termination of Trust, the trustees are directed to assign, transfer, and distribute the principal and all undistributed income of Trust to and among the persons then entitled to the income, in the shares and proportions to which they are so entitled. However, if the grandchild dying last was currently receiving income at the time of his or her death, the issue of such grandchild shall be entitled to share collectively in the principal and undistributed income of Trust in the same percentage as such grandchild was sharing in the income at the date of his or her death.

In the event that no person is entitled to the principal of the trust under Article Eighth, Section F, the trustees are directed to assign, transfer, and pay the principal and all undistributed income of Trust to Charity.

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Grandchild 1 died on Date 2, survived by his two children, Grandchild 2, and Grandchild 3. Taxpayer, one of Grandchild 1's surviving children, currently is entitled to receive a portion of Grandchild 1's two-thirds income interest in Trust during the Trust term. If either Taxpayer or his issue is alive when Trust terminates, Taxpayer, or his issue, is entitled to receive a proportionate share of the principal and undistributed income of Trust upon termination. It is represented that Taxpayer first learned of the existence of Trust after the death of his father (Grandchild 1). On Date 3, less than nine months after the death of Grandchild 1, Taxpayer disclaimed a fractional share of his interest in the principal of Trust. Taxpayer, however, retained his right to his share of Trust income and his remaining interest in Trust principal.

Taxpayer has received and accepted distributions of income from Trust since Grandchild 1's death, but has neither received nor accepted any distributions of principal.

Ruling Requests

1) Taxpayer's disclaimer of a fractional share of his interest in Trust principal is a valid disclaimer under § 25.2511-1 of the Gift Tax Regulations; and

2) Taxpayer's disclaimer of a fractional share of his interest in Trust principal will not constitute a gift under § 2501 of the Internal Revenue Code.

Law and Analysis

Section 2501(a)(1) imposes a tax, for each calendar year, on the transfer of property by gift by any individual, resident or nonresident.

Section 2511 provides that the tax imposed by § 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)(1) provides that the gift tax also applies to gifts indirectly made. Thus, any transaction in which an interest in property is gratuitously passed or conferred upon another, regardless of the means or device employed, constitutes a gift subject to tax.

Section 25.2511-1(c)(2) 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 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 after knowledge of the existence of the transfer. The refusal must be unequivocal and effective under the local

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law. There can be no refusal of ownership of property after its acceptance. In the absence of facts to the contrary, if a person fails to refuse to accept a transfer to him of ownership of a decedent's property within a reasonable time after learning of the existence of the transfer, he will be presumed to have accepted the property. In any case where a refusal is purported to relate to only a part of the property, the determination of whether or not there has been a complete and unqualified refusal to accept ownership will depend on all of the facts and circumstances in each particular case, taking into account the recognition and effectiveness of such a purported refusal under local law.

Thus, for a disclaimer to be recognized for federal gift tax purposes, with respect to a property interest created in a pre-1977 transfer, it must be (1) recognized under local law, (2) made within a "reasonable time" after knowledge of the existence of the transfer, (3) made before the acceptance of the property transferred, and (4) unequivocal.

The Supreme Court has recognized that, under the regulations, an interest must be disclaimed within a reasonable time after obtaining knowledge of the transfer creating the interest to be disclaimed, rather than a reasonable time after the distribution or vesting of the interest. Jewett v. Commissioner, 455 U.S. 305 (1982). The requirement in the regulations that the disclaimer must be made within a "reasonable time" is a matter of federal, rather than local law. Jewett, 455 U.S. at 316. Whether a period of time is reasonable under the regulations is dependent on the facts and circumstances presented. See, e.g., Jewett v. Commissioner, 70 T.C. 430, 438 (1978), aff'd, 455 U.S. 305 (1982).

With respect to property interests created after December 31, 1976, § 2518 and the regulations thereunder set forth the requirements that must be met for a disclaimer to be treated as a qualified disclaimer for federal gift tax purposes. While § 2518 and the regulations thereunder do not govern the disclaimer of property interests created before January 1, 1977, they are nevertheless instructive to the extent they represent a uniform federal rule for disclaimers that is applicable to the estate tax, the gift tax, and the tax on generation-skipping transfers.

Section 2518 provides that if a person makes a qualified disclaimer with respect to any interest in property, then such interest is treated as if it had never been transferred to the disclaimant.

Under § 25.2518-2(d)(4), Example 1, A established a trust for the benefit of B, then age 22. Pursuant to the terms of the trust, the current income of the trust is to be paid quarterly to B. Additionally, one-half the principal is to be distributed to B when B attains the age of 30 years. The balance of the principal is to be distributed to B when B attains the age of 40 years. B received a distribution of income on June 30, 1977. On August 1, 1977, B disclaimed B's right to receive both the income from the trust and

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the principal of the trust. B's disclaimer of the income interest is not a qualified disclaimer for purposes of § 2518(a) because B accepted income prior to making the disclaimer. B's disclaimer of the principal, however, does satisfy § 2518(b)(3).

Section 25.2518-3(b) provides that a disclaimer of an undivided portion of a separate interest in property which meets the other requirements of a qualified disclaimer under § 2518(b) and the corresponding regulations is a qualified disclaimer. An undivided portion of a disclaimant's separate interest in property must consist of a fraction or percentage of each and every substantial interest or right owned by the disclaimant in such property and must extend over the entire term of the disclaimant's interest in such property and in other property into which such property is converted.

In § 25.2518-3(d), Example (8), E died testate on September 13, 1978. Under the provisions of E's will, E's shares of stock in X, Y, and Z corporations were to be transferred to a trust. The trust provides that all income is to be distributed currently to F and G in equal parts until F attains the age of 45 years. At that time the corpus of the trust is to be divided equally between F and G. F disclaimed the entire income interest in the trust while retaining the interest F has in corpus. G disclaimed G's entire corpus interest while retaining G's interest in the income from the trust. If the remaining requirements of § 2518(b) are met, either disclaimer will be a qualified disclaimer.

Section 25.2518-3(a)(1) provides that, if the requirements of § 2518 are met, 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. For example, if an income interest in securities is bequeathed to A for life, then to B for life, with the remainder interest in such securities bequeathed to A's estate, and if the remaining requirements of § 2518(b) are met, A could make a qualified disclaimer of either the income interest or the remainder, or an undivided portion of either interest.

Under § 25.2518-3(d) Example 21, C created a trust which provides that all current income is to be distributed equally between D and E for the life of D. D also is given a testamentary general power of appointment over the corpus. D disclaimed the testamentary power to appoint an undivided one-half of the trust corpus. Assuming the remaining requirements of § 2518(b) are satisfied, D's disclaimer is a qualified disclaimer under § 2518(a).

In this case, Taxpayer represents that he executed a written disclaimer and delivered it to Trustee within nine months of learning of the existence of the transfer creating the interest. Accordingly, we conclude that Taxpayer's disclaimer was made within a reasonable time after knowledge of the existence of the transfer under § 25.2511-1(c)(2). Taxpayer also represents that he has neither received nor accepted any distributions of principal. Therefore, if the disclaimer is valid and effective under the

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governing local law and such validation is consistent with applicable state law as would be applied by the highest court of the state, and if the other requirements of § 25.2511-1(c)(2) are satisfied, Taxpayer's disclaimer of a fractional share of his interest in Trust principal is a valid disclaimer under § 25.2511-1 and does not constitute a transfer subject to gift tax under § 2501.

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.

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. Specifically, no opinion is expressed concerning whether Taxpayer's disclaimer is effective and valid under the governing state law.

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.

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

Sincerely,
Assistant Chief Counsel
Passthroughs and Special Industries
By: Robert Honigman
Acting Assistant Branch Chief
Branch 4

Enclosure (1)
Copy for section 6110 purposes