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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
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, ID No.

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CC:PSI:B09
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Date:
April 19, 2005

Legend

Taxpayer =
Grantor =
Trust =
Date 1 =
Date 2 =

Dear :

This is in response to your authorized representative's letter dated January 10, 2005, and prior correspondence, requesting rulings under the applicable provisions of the Internal Revenue Code. The facts submitted are as follows.

On Date 1, Grantor funded the Trust. Date 1 is prior to January 1, 1977. The terms of the Trust provide that income is to be distributed to Grantor's son for his life. Upon the son's death, the Trust is to be divided into equal shares, one for each grandchild, and the income from a respective grandchild's share is to be distributed to the grandchild for life. On the death of a grandchild, the Trust terminates as to that grandchild, and is distributed outright pursuant to a testamentary limited power of appointment to a class consisting of the grandchild's spouse, issue, and spouses of such issue or, in default of appointment, to the grandchild's issue. The terms of Trust also provide that, in all events, the Trust will terminate 21 years after the last to die of several measuring lives, two of whom are still living. Therefore, if a grandchild survives the expiration of the perpetuities period, the Trust corpus will pass to the grandchild, outright.

Taxpayer, Grantor's grandson, learned of his interest in the Trust and reached the age of majority prior to January 1, 1977. On Date 2, Taxpayer's father died and Taxpayer's interest in the Trust commenced.

As noted above, if Taxpayer survives the expiration of the perpetuities period, the Trust corpus will pass to him outright. Taxpayer proposes to renounce one-fifth of this

remainder interest. As a result of the renunciation, one-fifth of the Trust corpus will pass to Taxpayer's issue, per stirpes.

Taxpayer requests the following rulings:

- 1) That the renunciation will constitute a completed gift;
- 2) That the Service provide the actuarial factor to value a remainder interest payable 21 years after the death of the survivor of two lives in being, provided Taxpayer survives; and
- 3) That the gift of the remainder interest will not cause the Trust to become subject to Chapter 13 of the Code.

RULING 1

Section 2501(a)(1) of the Internal Revenue Code provides for the imposition of a gift tax on the transfer of property by gift. Section 2511(a) provides that the gift tax applies to a transfer by way of gift 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 property transferred from a decedent (whether the transfer is effected by the decedent's will or by the law of descent and distribution), 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 law. There can be no refusal of ownership of property after its acceptance. In the absence of the 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. Where the local law does not permit such a refusal, any disposition by the beneficiary, heir, or next-of-kin whereby ownership is transferred gratuitously to another constitutes the making of a gift by the beneficiary, heir, or next-of-kin. 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 the local law. Compare §§ 25.2518-1 through 25.2518-3, which apply to a qualified disclaimer of an interest in property that is created in the beneficiary disclaiming by a transfer made after December 31, 1976.

As noted above, the renunciation of a portion of the remainder interest will constitute a taxable gift unless it is made within a reasonable time after knowledge of the existence of the transfer. Section 25.2511-1(c)(2). The transfer referred to in the regulation

occurs when the interest is created and not at a later time when the interest either vests or becomes possessory. Jewett v. Commissioner, 455 U.S. 305 (1982). Here, the Trust was created prior to January 1, 1977, and Taxpayer, having reached the age of majority, learned of his interest prior to that date. On these facts, the renunciation will not be timely because it will not have been made within a reasonable time after Taxpayer learned of the existence of the transfer that created the remainder. United States v. Irvine, 511 U.S. 224, 234-36 (1994). Moreover, by accepting the entire Trust income since Date 2, Taxpayer has accepted the entire Trust corpus. Section 25.2511-1(c)(2). Accordingly, the renunciation of one-fifth of the remainder interest constitutes a taxable gift.

RULING 2

Section 2702(a)(1) provides that solely for purposes of determining whether a transfer of an interest in trust to (or for the benefit of) a member of the transferor's family is a gift (and the value of the transfer), the value of any interest in the trust retained by the transferor or any applicable family member, as defined in § 2701(e)(2), shall be determined as provided in § 2702(a)(2).

Section 2702(a)(2)(A) provides that the value of any retained interest which is not a qualified interest shall be treated as being zero.

Section 2702(b) defines a qualified interest as (1) any interest which consists of the right to receive fixed amounts payable not less frequently than annually, (2) any interest which consists of the right to receive amounts which are payable not less frequently than annually and are a fixed percentage of the fair market value of the property in the trust (determined annually), and (3) any noncontingent remainder interest if all of the other interests in the trust consist of interests described in (1) or (2) above.

Section 2702(c)(1) provides that the transfer of an interest in property with respect to which there is 1 or more term interests shall be treated as a transfer of an interest in a trust. Section 2702(c)(3) defines a term interest as including a life interest in property.

Section 2702(d) provides that in the case of a transfer of an income or remainder interest with respect to a specified portion of the property in a trust, only that portion shall be taken into account in applying § 2702 to the transfer.

Section 2702 was added by the Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101-508, § 11602(a), 104 Stat. 1388-497 (Nov. 5, 1990). Section 2702 applies to transfers made after October 8, 1990.

Section 25.2702-2(a)(1) defines a member of the family as an individual's spouse, any ancestor or lineal descendent of the individual or the individual's spouse, any brother or sister of the individual, and any spouse of the foregoing.

Section 25.2702-2(a)(2) defines a transfer in trust as including a transfer to a new or existing trust and an assignment of an interest in an existing trust. A transfer in trust does not include the execution of a qualified disclaimer (as defined in § 2518).

Section 25.2702-2(a)(3) defines the term retained as held by the same individual both before and after the transfer in trust.

Section 25.2702-2(d)(1)(Example 1) provides that A transfers property to an irrevocable trust, retaining the right to receive the income of the trust for 10 years. On the expiration of the 10-year term, the trust is to terminate and the trust corpus is to be paid to A's child. However, if A dies during the 10-year term, the entire trust corpus is to be paid to A's estate. Each retained interest is valued at zero because it is not a qualified interest. Thus, the amount of A's gift is the fair market value of the property transferred to the trust.

Here, Taxpayer proposes to renounce one-fifth of the remainder interest while retaining the income interest in the Trust. The transfer of an interest in property with respect to which there is one or more term interests is treated as a transfer of an interest in a trust. Section 2702(c). A term interest includes a life interest in property. Section 2702(c)(3). Thus, the transfer of one-fifth of the remainder will constitute a transfer in trust for purposes of § 2702(a)(1). Section 25.2702-2(a)(2).

After the proposed renunciation, Taxpayer will retain his income interest in the Trust. An income interest is not a qualified interest, and will be valued at zero. Sections 2702(b)(1) and (2); section 2702(a)(2)(A). Even though the remainder interest to be transferred was created prior to October 9, 1990, the proposed transfer will occur after October 8, 1990. Moreover, the transfer will not constitute a qualified disclaimer, as defined in § 2518. Finally, the transferees are Taxpayer's issue, members of the Taxpayer's family. Section 2702(a)(1); section 25.2702-2(a)(1). Accordingly, Taxpayer will be treated as making a gift of one-fifth of the entire value of the corpus of the Trust, and no actuarial factor will be necessary.

RULING 3

Section 2601 imposes a tax on every generation-skipping transfer. A generation skipping transfer is defined under § 2611(a) as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

The generation-skipping transfer tax provisions do not apply to any generation-skipping transfer under a trust (as defined in § 2652(b)) that was irrevocable on September 25, 1985. See § 1433(b)(2)(A) of the Tax Reform Act of 1986, Pub. L. 99-514, 100 Stat. 2731 (October 22, 1986); Section 26.2601-1(b)(1)(i). This exemption does not apply, however, to a pro rata portion of any generation-skipping transfer under an irrevocable trust if additions (actual or constructive) are made to the trust after September 25, 1985.

Section 2602 provides that the amount of the tax is the taxable amount multiplied by the applicable rate. Section 2641(a) defines "applicable rate" as the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer.

Section 2652(a)(1)(A) provides that, generally, except as provided in this subsection or § 2653(a), the term "transferor" means in the case of any property subject to the tax imposed by chapter 11, the decedent, and in the case of any property subject to the tax imposed by chapter 12, the donor.

Section 26.2652-1(a)(1) of the Generation Skipping Tax Regulations provides, in part, that, generally, the individual with respect to whom property was most recently subject to federal estate or gift tax is the transferor of that property for purposes of chapter 13. An individual is treated as transferring any property with respect to which the individual is the transferor. Thus, an individual may be the transferor even though there is no transfer of property under local law at the time the federal estate and gift tax applies.

Section 26.2652-1(a)(2) provides that a transfer is subject to federal gift tax if a gift tax is imposed under § 2501(a) (without regard to exemptions, exclusions, deductions, and credits).

As discussed above, the renunciation of one-fifth of the remainder interest will constitute a completed gift. The amount of the gift is one-fifth of the entire value of the corpus of the Trust. Thus, Taxpayer will be treated as the transferor of one-fifth of the entire value of the corpus of the Trust. Accordingly, the gift will cause one-fifth of the entire value Trust to become subject to Chapter 13 of the Code.

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) provides that it may not be used or cited as precedent.

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,

James F. Hogan
Senior Technician Reviewer, Branch 9
(Passthroughs & Special Industries)

Enclosure

Copy for section 6110 purposes

cc: