

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:04

PLR-107740-06

Date:

March 08, 2006

Legend:

Decedent	=	
Spouse	=	
Child A	=	
Child B	=	=
Child C	=	
Grandchild 1	=	
Grandchild 2	=	
Grandchild 3	=	
Grandchild 4	=	
Grandchild 5	=	
Grandchild 6	=	
Grandchild 7	=	
Grandchild 8	=	
Grandchild 9	=	
Grandchild 10	=	
Trust	=	
Date 1	=	
Date 2	=	
Date 3	=	
Date 4	=	
County	=	
Court	=	
State	=	
State Code	=	
State Code 1	=	
State Code 2	=	
State Code 3	=	

State Code 4	=
State Code 5	=
State Code 6	=
State Code 7	=

Dear _____ :

This letter is in response to a letter dated January 26, 2006 from your authorized representatives requesting rulings that the proposed disclaimers described below will be qualified disclaimers for purposes of § 2518 of the Internal Revenue Code.

The facts and representations submitted are summarized as follows:

Decedent died testate on Date 1. Decedent's will was admitted to probate in County, State on Date 2. Decedent was survived by Spouse, Child A, Child B, and Child C who are adults and ten grandchildren. Five of the grandchildren, Grandchild 1-5 are adults over 21, three of the grandchildren, Grandchild 6-8 are adults between the ages 18-21 (Adult Grandchildren) and two of the grandchildren, Grandchild 9 and Grandchild 10 are minors (Minor Grandchildren) under the age of 18 and reside outside of State.

Decedent's will, after a bequest to Spouse of all of Decedent's tangible personal property, provides that the residue of Decedent's estate is to pass to Trust, an inter vivos revocable trust created by Decedent prior to his death that became irrevocable on his death. Trust is to be construed under the laws of State. Articles I through VII of Trust provide for distributions during Decedent's lifetime and for various gifts following Decedent's death. Article VIII of Trust provides for the division of the balance of Trust after the above gifts into two parts, the Marital Trust and the Family Share. The Marital Trust is to be funded with a specified pecuniary amount and is intended to qualify for the federal estate tax marital deduction. The Family Share is to be funded with the balance of the principal of Trust remaining after the funding of the Marital Trust, and is to be distributed in accordance with Article IX.

Article IX of Trust provides that the Family Share is to be distributed, after payment of taxes, expenses and debts of Decedent's estate, outright to Decedent's lineal descendants who survive Decedent, per stirpes, or, if none of Decedent's lineal descendants survive, then outright to Spouse, if Spouse survives Decedent. Article XII of Trust provides that any share otherwise distributable to a person who is under age 21 is to be distributed to any inter vivos trust then in existence that was created by Decedent for the benefit of that person, or if no trust is in existence, otherwise withheld for that person until he or she reaches age 21. At the time of Decedent's death, a trust existed for each of five grandchildren who are under age 21.

Decedent's will and Trust are silent regarding the effect of a disclaimer by a beneficiary. Child A, Child B, and Child C are co-executors of Decedent's estate and co-trustees of Trust.

Child A, Child B, and Child C propose to disclaim his or her entire beneficial interest in the Family Share that otherwise would have been distributed to him or her under Articles VIII and IX of Trust.

Adult Grandchildren propose to disclaim the entire beneficial interest in the Family Share that otherwise would have become distributable to the adult grandchildren (or a trust for his or her benefit) under Article IX and under State Code as a result of the disclaimer by the adult grandchild's respective parent.

By Court Order on Date 3, Court appointed a guardian for Minor Grandchildren. The guardian has the power to disclaim any beneficial interests to which the Minor Grandchildren may become entitled under Decedent's will and Trust, subject to Court approval. The guardian proposes to disclaim the entire beneficial interest in the Family Share that otherwise would have become distributable to a trust for the benefit of each Minor Grandchild as a result of Minor Grandchild's parent's disclaimer under Article IX and under State Code. The guardian concluded that Minor Grandchildren's rights (and the rights of their creditors) would not be prejudiced because under the terms of Article IX of Trust, their interests in the Family Trust are contingent upon their parent predeceasing them. In this case, the minor grandchildren's parent survived them and in the absence of the disclaimer by their parent, they would have no interest, either vested or contingent, in the Family Share.

By Court Order on Date 4, Court granted approval of the proposed disclaimers conditioned on the issuance of a favorable ruling from the IRS that the disclaimers will be a qualified disclaimers under § 2518. As a result of the disclaimers, the interests disclaimed will pass to Spouse pursuant to Article IX of Trust and applicable State law (discussed below).

It is represented that all of the disclaimers will be irrevocable, in writing, and delivered to the executors and trustees within nine months of the date of Decedent's death and filed with Court. None of the disclaimants has received any benefit by reason of the interests proposed to be disclaimed. There is no express or implied agreement between or among the disclaimants or Spouse that the interests proposed to be disclaimed will be given to a person or persons specified by any of the disclaimants.

Under State Code 1, a person to whom an interest in property would have devolved by whatever means and a person entitled to a disclaimed interest may disclaim the interest in whole or in part by a written disclaimer that: (1) describes the interest disclaimed; (2) declares the disclaimer and extent thereof; and (3) is signed

by the disclaimant. Under State Code 2, a disclaimer may be made, in whole or in part, of any present or future interest, whether vested or contingent. Under State law, a disclaimer can be made at any time before acceptance as that term is defined in State Code 3.

State Code 4 provides that a person disclaiming an interest under the will of a State resident must file the disclaimer with the clerk of the Court in the county where the decedent died domiciled and a copy of the disclaimer must be delivered to any personal representative, trustee or other fiduciary in possession of the property. A person disclaiming an interest under an inter vivos instrument, must deliver the disclaimer or a copy of the disclaimer to the trustee or other person having legal title to or possession of the property or interest disclaimed or who is entitled to receive the property by reason of the disclaimer.

Under State Code 5, a disclaimer relates back for all purposes to the date of death of the decedent. Unless a testator or donor has provided for another disposition, a disclaimer, for purposes of determining the rights of other parties, is equivalent to the disclaimant's having predeceased the decedent except that, with respect to rules of succession, the fact that the disclaimant actually survived is recognized in determining whether other parties take equally or by representation.

State Code 6 provides that a guardian of the estate within State of a minor residing outside State may be appointed by the Court of the county having jurisdiction of a decedent's estate or a trust from which the minor's estate is derived. Under State Code 6, a disclaimer on behalf of a minor may be made by the guardian of the minor's estate if the court having jurisdiction of the estate authorized the disclaimer after finding that it is "advisable and will not materially prejudice the rights of the minor or the minor's creditors."

The following rulings are requested:

1. The disclaimers by Child A, Child B, and Child C of their entire beneficial interests in the Family Share under Article IX of Trust will constitute qualified disclaimers for purposes of § 2518.

2. The disclaimers by Adult Grandchildren of their entire beneficial interests in the Family Share that would pass to them under Article IX of Trust as a result of their parents' disclaimers of the parents' interests under Article IX will constitute qualified disclaimers under § 2518.

3. The disclaimers by Minor Grandchildren, through their guardian, of their entire beneficial interests in the Family Share that would pass to them under Article IX of Trust as a result of their parent's disclaimer of the parent's interests under Article IX and will constitute qualified disclaimers under § 2518.

4. The property passing outright to Spouse under Article IX by reason of the disclaimers will qualify for the federal estate tax marital deduction.

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.

Section 25.2518-2(d)(2) provides that 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 is not treated as an acceptance of the property or its benefits. A fiduciary cannot retain however, a wholly discretionary power to allocate enjoyment of the disclaimed interest among members of a designated 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. The requirements of a qualified disclaimer under § 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). If there is an express or implied agreement that the disclaimed interest in property is to be given or bequeathed to a person specified by the disclaimant, then the disclaimant is treated as directing the transfer of the property interest.

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 other means, and (ii) the disclaimant does not effectively disclaim these rights, then the disclaimer is not a qualified disclaimer with respect to the portion of the disclaimed property which the disclaimant has a right to receive.

Section 2046 provides that for estate tax purposes, disclaimers of property interests passing upon death are treated as provided in § 2518. Section 2056(a) provides that for purposes of the tax imposed by § 2001, the value of the taxable estate, except as limited by § 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 the decedent's surviving spouse, but only to the extent that such interest is included in determining the value of the gross estate.

Section 20.2056(d)-(2)(b) provides that if an interest in property passes from the decedent to a person other than the surviving spouse in a transfer made after December 31, 1976, and the person to whom the property passes makes a qualified disclaimer with respect to the property, and the surviving spouse is entitled to such interest as a result of the disclaimer, then the disclaimed interest is treated as passing directly from the decedent to the surviving spouse.

It is represented that all of the disclaimers will be irrevocable, in writing, and delivered to the executors and trustees within nine months of the date of Decedent's death and filed with Court. None of the disclaimants has received any benefit by reason of the interests proposed to be disclaimed. There is no express or implied agreement between or among the disclaimants or Spouse that the interests proposed to be disclaimed will be given to a person or persons specified by any of the disclaimants. Further, under State Code 5 and Article IX of Trust, as a result of the disclaimers, the interests disclaimed will pass outright to Spouse. Therefore, based on the facts and representations made, we conclude the disclaimers by Child A, Child B, Child C, Adult Grandchildren, and Minor Grandchildren through their guardian, will constitute qualified disclaimers for purposes of § 2518. Further, we conclude that in accordance with § 20.2056(d)-2(b), the property that passes to Spouse as result of the disclaimers will be treated for purposes of the estate tax marital deduction under § 2056(a) as passing directly from the Decedent to Spouse. Accordingly, such property will qualify for the estate tax marital deduction under § 2056(a).

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. In addition, we express or imply no opinion regarding the value of the property transferred to the trust.

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.

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

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

Sincerely,

George L. Masnik
Chief, Branch 4
(Passthroughs & Special Industries)

Enclosures

Copy for section 6110 purposes
Copy of this letter

cc: