

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact: \_\_\_\_\_, ID No.

Telephone Number:

In Re:

Refer Reply To:  
CC:PSI:B04  
PLR-151724-07  
Date:  
March 17, 2008

**Legend:**

- Husband =
- Wife =
- Account 1 =
- Account 2 =
- Brokerage Firm 1 =
- Brokerage Firm 2 =
- Wife's Account 1 =
- Wife's Account 2 =
- Trust =
- State Law =
- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
- Date 5 =
- A =

Dear \_\_\_\_\_ :

This letter is in response to a letter dated November 20, 2007, and subsequent correspondence, from your authorized representatives requesting rulings under ' 2518 of the Internal Revenue Code.

The facts submitted and the representations made are as follows. Husband and Wife opened two brokerage accounts, Account 1 with Brokerage Firm 1 and Account 2 with Brokerage Firm 2. Husband died on Date 1.

Account 1:

Account 1 was held in the name of Husband and Wife, as joint tenants with right of survivorship. Husband was the sole contributor to Account 1. During his lifetime, Husband had the right to unilaterally withdraw all the funds in the account pursuant to the account agreement.

As of Husband's date of death on Date 1, the account consisted of publicly traded stock, bonds, and other securities, and a money market account. Shortly after Husband's death, Brokerage Firm 1 informed Wife that Account 1 had to be closed as a result of Husband's death. At the direction of Brokerage Firm 1, a new account (Wife's Account 1) was established at Brokerage Firm 1 for Wife. On or around Date 2, Account 1's assets were transferred to Wife's Account 1.

Between Date 1 and Date 2, Wife received distributions from Account 1 by check. Wife deposited the checks received in a money market account (Money Market Account) that had previously been held by Husband and Wife as joint tenants with right of survivorship at an entity other than Brokerage Firm 1 or Brokerage Firm 2. After Date 2 and until Wife met with her attorneys regarding Husband's estate on Date 3, Wife received distributions from Wife's Account 1 by check, which she deposited in Money Market Account. The distribution total equaled \$A. Subsequent to Date 2, Wife did not direct the sale or purchase of any securities in Wife's Account 1.

On Date 4, Wife was appointed personal representative of Husband's estate. Just prior to Date 4, Wife opened a bank account in the name of Husband's estate (Estate's Bank Account) at an entity other than Brokerage Firm 1 or Brokerage Firm 2. Shortly after Date 4, Wife opened an account with Brokerage Firm 1 for Husband's estate (Estate's Account 1). Brokerage Firm 1 transferred the assets that were transferred from Account 1 to Wife's Account 1 into Estate's Account 1. Wife transferred to Estate's Bank Account an amount of cash equal to \$A, representing the distributions she received from Account 1 and Wife's Account 1. It has been represented that Wife will transfer to Wife's Account 1 from Estate's Bank Account \$A, and from Estate's Account 1 the income earned on \$A since Husband's death calculated pursuant to ' 25.2518-3(c).

#### Account 2:

Account 2 was held in the name of Husband and Wife as joint tenants with right of survivorship. Husband and Wife contributed equal amounts to Account 2. Prior to Husband's death, each spouse had the right to unilaterally withdraw his or her contributions from Account 2 at any time prior to his or her death in accordance with the account agreement.

As of Husband's date of death on Date 1, Account 2 consisted of publicly traded stock, bonds, and other securities, and a money market account. Shortly after Husband's death, Brokerage Firm 2 informed Wife that Account 2 had to be closed due to Husband's death. At the direction of Brokerage Firm 2, on Date 5, Wife transferred the

assets from Account 2 into an account Wife had established at Brokerage Firm 2 prior to Husband's death (Wife's Account 2). After Date 1 but prior to Date 3, a municipal bond was redeemed by the bond's issuer, a security was redeemed by the security's issuer, and new securities were purchased with the proceeds from the redeemed bond, the redeemed security, and cash previously held in Account 2. Wife's financial advisor at Brokerage Firm 2 initiated and solicited the purchase of the new securities. Wife approved the purchase of the new securities. Shortly after Date 4, Wife established an account for Decedent's estate (Estate Account 2) at Brokerage Firm 2.

Brokerage Firm 2 transferred to Estate Account 2 assets equal to one-half of the value of the assets originally held in Account 2 as of Date 1, valued as of the transfer date, plus cash equal to one-half of the interest and dividends earned on the assets originally held in Account 2, from Date 1 through the date of transfer. An equal amount of assets and income attributable to Account 2 was retained in Wife's Account 2. It has been represented that the new securities (the purchase of which Wife authorized) will be allocated one-half to Estate Account 2 and one-half to Wife's Account 2. It has been further represented that Husband's one-half interest in the new securities (and the income earned on this one-half interest since Husband's death calculated pursuant to ' 25.2518-3(c)) will be transferred from Estate Account 2 to Wife's Account 2.

#### Proposed Disclaimers:

Wife proposes to disclaim the assets in Account 1 (and the income earned on those assets since Husband's death), minus \$A (and income earned on \$A since Husband's death calculated pursuant to ' 25.2518-3(c)). Wife proposes to disclaim Husband's one-half of the assets in Account 2 (and the income earned on those assets since Husband's death), minus Husband's one-half interest in the new securities (and the income earned on this one-half interest since Husband's death calculated pursuant to ' 25.2518-3(c)).

As a result of the proposed disclaimers, pursuant to State Law, Wife will be treated as having predeceased Husband with respect to the disclaimed property and the disclaimed property will be distributed to Husband's estate. Pursuant to Husband's will, the residuary of Husband's estate will be distributed to Trust, a revocable trust that became irrevocable at Husband's death. Article V, paragraph C of Trust provides for the creation of a marital trust and a family trust. Wife has a testamentary nongeneral power of appointment over the marital trust and the family trust. Wife proposes to disclaim her testamentary nongeneral power of appointment over these trusts.

Wife is requesting three rulings: (1) the proposed disclaimer of Wife's testamentary nongeneral power of appointment over the marital trust and the family trust will be a qualified disclaimer under ' 2518; (2) the proposed disclaimer of the assets originally held in Account 1 (and the income earned on those assets since Husband's death), minus \$A (and income earned on \$A since Husband's death calculated pursuant to

' 25.2518-3(c)) will be a qualified disclaimer under ' 2518; and (2) the proposed disclaimer of Husband's one-half interest in the assets originally held in Account 2 (and the income earned on those assets since Husband's death), minus Husband's one-half interest in the value of the new securities (and the income earned on this one-half interest since Husband's death calculated pursuant to ' 25.2518-3(c)) will be a qualified disclaimer under ' 2518.

### Law and Analysis:

Section 2046 provides that disclaimers of property interests passing upon death are treated as provided under ' 2518.

Section 2518 provides that, if a person makes a qualified disclaimer with respect to any interest in property, the disclaimed interest is treated as if it had never been transferred to the person making the qualified disclaimer for purposes of the federal estate, gift, and generation-skipping transfer tax provisions.

Under ' 2518(b), the term "qualified disclaimer" means an irrevocable and unqualified refusal by a person to accept an interest in property, but only if -- (1) the refusal is in writing, (2) the writing is received by the transferor of the interest or his legal representative no later than nine 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 refusal, the interest passes without any direction on the part of the person making the disclaimer and passes either to the decedent's spouse or to a person other than the person making the disclaimer.

Section 25.2518-2(c)(4)(iii) of the Gift Tax Regulations provides that in the case of a transfer to a joint bank, brokerage, or other investment account (e.g., an account held at a mutual fund), if a transferor may unilaterally regain the transferor's own contributions to the account without the consent of the other cotenant, such that the transfer is not a completed gift under ' 25.2511-1(h)(4), the transfer creating the survivor's interest in the decedent's share of the account occurs on the death of the deceased cotenant. Accordingly, if a surviving joint tenant desires to make a qualified disclaimer with respect to funds contributed by a deceased cotenant, the disclaimer must be made within nine months of the cotenant's death. The surviving joint tenant may not disclaim any portion of the joint account attributable to consideration furnished by that surviving joint tenant.

In Example 12 of ' 25.2518-2(c)(5), on July 1, 1990, A opens a bank account that is held jointly with B, A's spouse, and transfers \$50,000 of A's money to the account. A and B are United States citizens. A can regain the entire account without B's consent, such that the transfer is not a completed gift under § 25.2511-1(h)(4). A dies on

August 15, 1998, and B disclaims the entire amount in the bank account on October 15, 1998. Assuming that the remaining requirements of ' 2518(b) are satisfied, B made a qualified disclaimer under ' 2518(a) because the disclaimer was made within nine months after A's death at which time B had succeeded to full dominion and control over the account. Under state law, B is treated as predeceasing A with respect to the disclaimed interest. The disclaimed account balance passes through A's probate estate and is no longer joint property includible in A's gross estate under ' 2040. The entire account is, instead, includible in A's gross estate under ' 2033. The result would be the same if A and B were not married.

In Example 13 of ' 25.2518-2(c)(5), the facts are the same as Example 12, except that B, rather than A, dies on August 15, 1998. A may not make a qualified disclaimer with respect to any of the funds in the bank account, because A furnished the funds for the entire account and A did not relinquish dominion and control over the funds.

Section 25.2518-2(d)(1) provides, in relevant part, that a qualified disclaimer cannot be made with respect to an interest in property if the disclaimant has accepted the interest or any of its benefits, expressly or impliedly, prior to making the disclaimer. Acceptance is manifested by an affirmative act which is consistent with ownership of the interest in property. Acts indicative of acceptance include using the property or the interest in property; accepting dividends, interest, or rents from the property; and directing others to act with respect to the property or interest in property. However, merely taking delivery of an instrument of title, without more, does not constitute acceptance. Moreover, a disclaimant is not considered to have accepted property merely because under applicable local law title to the property vests immediately in the disclaimant upon the death of a decedent. The acceptance of one interest in property will not, by itself, constitute an acceptance of any other separate interests created by the transferor and held by the disclaimant in the same property.

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 shall not be treated as an acceptance of such property or any of its benefits. Under this rule, for example, an executor who is also a beneficiary may direct the harvesting of a crop or the general maintenance of a home. A fiduciary, however, cannot retain a wholly discretionary power to direct the enjoyment of the disclaimed interest. For example, a fiduciary's disclaimer of a beneficial interest does not meet the requirements of a qualified disclaimer if the fiduciary exercised or retains a discretionary power to allocate enjoyment of that interest among members of a designated class.

Section 25.2518-2(e)(1) provides that 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 (except as ' 25.2518-2(e)(2)). The requirements of a qualified disclaimer under ' 2518 are not satisfied if -- (i) 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); or (ii) the disclaimed property or interest in property passes to or for the benefit of the disclaimant as a result of the disclaimer (except as provided in ' 25.2518-2(e)(2)). If a power of appointment is disclaimed, the requirements of ' 25,2518-2(e)(1) are satisfied so long as there is no direction on the part of the disclaimant with respect to the transfer of the interest subject to the power or with respect to the transfer of the power to another person. A person may make a qualified disclaimer of a beneficial interest in property even if after such disclaimer the disclaimant has a fiduciary power to distribute to designated beneficiaries, but only if the power is subject to an ascertainable standard.

Under ' 25.2518-2(e)(2), a disclaimer made by a decedent's surviving spouse with respect to property transferred by the decedent may be a qualified disclaimer if the interest passes as a result of the disclaimer without direction on the part of the surviving spouse either to the surviving spouse or to another person. If the surviving spouse, however, retains the right to direct the beneficial enjoyment of the disclaimed property in a transfer that is not subject to federal estate and gift tax (whether as a trustee or otherwise), such spouse will be treated as directing the beneficial enjoyment of the disclaimed property, unless such power is limited by an ascertainable standard.

In Example 4 of ' 25.2518-2(e)(5), B died testate on February 13, 1980. B's will established both a marital trust and a nonmarital trust. The decedent's surviving spouse, A, is an income beneficiary of the marital trust and has a testamentary general power of appointment over its assets. A is also an income beneficiary of the nonmarital trust, but has no power to appoint or invade the corpus. The provisions of the will specify that any portion of the marital trust disclaimed is to be added to the nonmarital trust. A disclaimed 30 percent of the marital trust. Pursuant to the will, this portion of the marital trust property was transferred to the nonmarital trust without any direction on the part of A. This disclaimer by A satisfies ' 2518(b)(4).

In Example 5 of ' 25.2518-2(e)(5), assume the same facts as in Example 4 except that A, the surviving spouse, has both an income interest in the nonmarital trust and a testamentary nongeneral power to appoint among designated beneficiaries. This power is not limited by an ascertainable standard. The requirements of ' 2518(b)(4) are not satisfied unless A also disclaims the nongeneral power to appoint the portion of the trust corpus that is attributable to the property that passed to the nonmarital trust as a result of A's disclaimer. Assuming that the fair market value of the disclaimed property on the date of the disclaimer is \$250,000 and that the fair market value of the nonmarital trust (including the disclaimed property) immediately after the disclaimer is \$750,000, A must disclaim the power to appoint one-third of the nonmarital trust's corpus. The result is the same regardless of whether the nongeneral power is testamentary or inter vivos.

Under ' 25.2518-3(a)(1)(i), 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.

Section 25.2518-3(a)(1)(ii) provides that a disclaimant shall be treated as making a qualified disclaimer of a separate interest in property if the disclaimer relates to severable property and the disclaimant makes a disclaimer which would be a qualified disclaimer if such property were the only property in which the disclaimant had an interest. Severable property is property which can be divided into separate parts each of which, after severance, maintains a complete and independent existence. For example, a legatee of shares of corporate stock may accept some shares of the stock and make a qualified disclaimer of the remaining shares.

Section 25.2518-3(a)(1)(iii) provides that a power of appointment with respect to property is treated as a separate interest in such property and such power of appointment with respect to all or an undivided portion of such property may be disclaimed independently from any other interests separately created by the transferor in the property if the requirements of ' 2518(b) are met. See, Example 21 of ' 25.2518-3(d). Further, a disclaimer of a power of appointment with respect to property is a qualified disclaimer only if any right to direct the beneficial enjoyment of the property which is retained by the disclaimant is limited by an ascertainable standard. See, Example 9 of ' 25.2518-3(d).

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. Such a segregation of assets making up the disclaimer of a pecuniary amount must be made on the basis of the fair market value of the assets on the date of the disclaimer or on a basis that is fairly representative of value changes that may have occurred between the date of transfer and the date of the disclaimer. A pecuniary amount distributed to the disclaimant from the bequest or gift prior to the disclaimer shall be treated as a distribution of corpus from the bequest or gift. However, the acceptance of a distribution from the gift or bequest shall also be considered to be an acceptance of a proportionate amount of income earned by the bequest or gift. The proportionate share of income considered to be accepted by the disclaimant shall be determined at the time of the disclaimer according to the following formula: total amount of distributions received by the disclaimant out of the gift or bequest divided by the total value of the gift or bequest

on the date of transfer times the total amount of income earned by the gift or bequest between date of transfer and date of disclaimer.

In Example 1 of ' 25.2518-3(d)(4), A, a resident of State Q, died on August 1, 1978. A's will included specific bequests of 100 shares of stock in X corporation; 200 shares of stock in Y corporation; 500 shares of stock in Z corporation; personal effects consisting of paintings, home furnishings, jewelry, and silver, and a 500 acre farm consisting of a residence, various outbuildings, and 500 head of cattle. The laws of State Q provide that a disclaimed interest passes in the same manner as if the disclaiming beneficiary had died immediately before the testator's death. Pursuant to A's will, B was to receive both the personal effects and the farm. C was to receive all the shares of stock in Corporation X and Y and D was to receive all the shares of stock in Corporation Z. B disclaimed two of the paintings and all the jewelry, C disclaimed 50 shares of Y corporation stock, and D disclaimed 100 shares of Z corporation stock. If the remaining requirements of ' 2518(b) and the corresponding regulations are met, each of these disclaimers is a qualified disclaimer for purposes of ' 2518(a).

In Example 17 of ' 25.2518-3(d), D bequeaths his brokerage account to E. The account consists of stocks and bonds and a cash amount earning interest. The total value of the cash and assets in the account on the date of D's death is \$100,000. Four months after D's death, E makes a withdrawal of cash from the account for personal use amounting to \$40,000. Eight months after D's death, E disclaims \$60,000 of the account without specifying any particular assets or cash. The cumulative fair market value of the stocks and bonds in the account on the date of the disclaimer is equal to the value of such stocks and bonds on the date of D's death. The income earned by the account between the date of D's death and the date of E's disclaimer was \$20,000. The amount of income earned by the account that E accepted by withdrawing \$40,000 from the account prior to the disclaimer is determined by applying the formula set forth in § 25.2518-3(c) as follows: \$40,000 divided by \$100,000 times \$20,000 equals \$8,000. E is considered to have accepted \$8,000 of the income earned by the account. If (i) the \$60,000 disclaimed by E and the \$12,000 of income earned prior to the disclaimer which is attributable to that amount are segregated from the \$8,000 of income E is considered to have accepted, (ii) E does not accept any benefits of the \$72,000 so segregated, and (iii) the other requirements of ' 2518(b) are met, then E's disclaimer of \$60,000 from the account is a qualified disclaimer.

In Example 18 of ' 25.2518-3(d), A bequeathed his residuary estate to B. The residuary estate had a value of \$1 million on the date of A's death. Six months later, B disclaimed \$200,000 out of this bequest. B received distributions of all the income from the entire estate during the period of administration. When the estate was distributed, B received the entire residuary estate except for \$200,000 in cash. B did not make a qualified disclaimer since he accepted the benefits of the \$200,000 during the period of estate administration.



In Example 19 of ' 25.2518-3(d), assume the same facts as in Example 18 except that no income was paid to B and the value of the residuary estate on the date of the disclaimer (including interest earned from date of death) was \$1.5 million. In addition, as soon as B's disclaimer was made, the executor of A's estate set aside assets worth \$300,000 (\$200,000 divided by \$1,000,000 times \$1,500,000) and the interest earned after the disclaimer on that amount in a separate fund so that none of the income was paid to B. B's disclaimer is a qualified disclaimer under ' 2518(a).

State Law provides that any individual to whom property or an interest therein is donatively transferred by any means, including a transfer resulting from another disclaimer, may disclaim all or any portion of the transfer. Unless the terms of the transfer otherwise provide, the disclaimer shall cause the terms of the transfer to be applied to the disclaimed transfer and to any future interests taking effect thereafter as if the disclaimant had died immediately before the transfer. The presumption of a disclaimant's death does not prevent recognition of the disclaimant's later born children and their issue, assuming they have rights after all proper acceleration has taken place, nor does it prevent recognition of future and other interests of the disclaimant which are not disclaimed. For all purposes the disclaimed interest is deemed to have passed directly from the transferor to the ultimate taker or takers and is not subject to the claim of any creditor of the disclaimant. A disclaimed portion of a transfer passes to the same ultimate taker or takers and in the same proportions as in the case of a disclaimer of all of the transfer.

#### Ruling 1:

Wife proposes to disclaim her testamentary nongeneral power of appointment over the marital trust and the family trust. Based upon the facts submitted and the representations made, Wife's proposed disclaimer of these testamentary nongeneral powers of appointment, will be a qualified disclaimer provided the requirements of ' 2518(b) are satisfied. See, ' 25.2518-3(a)(1)(iii).

#### Ruling 2:

It has been represented that Husband was the sole contributor to Account 1. Husband could unilaterally withdraw his contributions from Account 1 at any time prior to his death. Thus, Husband's contributions to the account were incomplete gifts until Husband's death. Consequently, under ' 25.2518-2(c)(4)(iii), the transfer creating Wife's survivorship interest in all of the assets in Account 1 occurred at Husband's death. Under ' 2518, Wife has nine months after his death to disclaim any part of her survivorship interest in the account. See, also, ' 25.2518-2(c)(5), Examples 12 and 13.

Within nine months after Husband's death, Wife proposes to execute a written disclaimer in which Wife will disclaim her survivorship interest in Account 1 (and the income earned on these assets since Husband's death), minus \$A (and the income

earned on \$A since Husband's death calculated pursuant to ' 25.2518-3(c)). As a result of Wife's disclaimer, pursuant to State Law, Wife is treated as predeceasing Husband with respect to the disclaimed assets which, consequently, are treated as passing to Husband's estate. After the disclaimer, pursuant to the terms of Husband's will and Trust, the disclaimed assets (and the earnings on those assets since Husband's death) will be distributed to the marital trust and/or the family trust. Wife proposes to disclaim her testamentary nongeneral power of appointment over the marital trust and the family trust. See, Ruling 1. It has been represented that \$A (and the income earned on \$A since Husband's death calculated pursuant to ' 25.2518-3(c)) will be segregated from the disclaimed property and held in Wife's Account 1.

After Husband's death, acting at Brokerage Firm 1's direction, Account 1 was closed and Wife transferred the assets in Account 1 to Wife's Account 1, an account established in her name. This action did not result in Wife's acceptance of Account 1's assets because under ' 25.2518-2(d)(1), the mere transfer of title to the assets in Account 1 is not treated as Wife's acceptance of Account 1's assets or as benefiting Wife for purposes of ' 2518(b)(3).

Within the meaning of ' 25.2518-2(d)(1), however, Wife accepted distributions from the assets originally held in Account 1 equal to \$A. Nevertheless, since \$A is a severable asset, pursuant to ' 25.2518-3(c), Wife can make a pecuniary disclaimer of the assets originally held in Account 1 (and the income earned on these assets since Husband's death), minus \$A (and the income earned on \$A since Husband's death calculated pursuant to ' 25.2518-3(c)). See, ' 25.2518-3(d), Example 17.

Accordingly, based upon the facts submitted and the representations made, Wife's proposed disclaimer of the assets originally held in Account 1 (and the income earned on these assets since Husband's death), minus \$A (and the income earned on \$A since Husband's death calculated pursuant to ' 25.2518-3(c)), will be a qualified disclaimer provided both the requirements of ' 2518(b) are satisfied and Wife's disclaimer of her testamentary nongeneral power of appointment over the marital trust and the family trust is a qualified disclaimer under ' 2518. See, ' 25.2518-2(e)(2) and ' 25.2518-2(e)(5), Example 5.

### Ruling 3:

Husband and Wife each contributed to Account 2 prior to Husband's death. Therefore, each spouse could unilaterally withdraw his or her contributions from Account 2 at any time prior to his or her death. Thus, each spouse's contributions to the account were incomplete gifts until Husband's death. Consequently, under ' 25.2518-2(c)(4)(iii), the transfer creating Wife's survivorship interest in Husband's share of Account 2 occurred at Husband's death. Under ' 2518, Wife has nine months after his death to disclaim any part of her survivorship interest in his share of the account.

Within nine months after Husband's death, Wife proposes to execute a written disclaimer in which Wife will disclaim Husband's one-half interest in the assets originally held in Account 2 (and the income earned on these assets since Husband's death), minus Husband's one-half interest in the new securities the purchase of which Wife authorized after Husband's death (and the income earned on this one-half interest since Husband's death calculated pursuant to ' 25.2518-3(c)). As a result of Wife's disclaimer, pursuant to State Law, Wife is treated as predeceasing Husband with respect to the disclaimed assets which, consequently, are treated as passing to Husband's estate. After the disclaimer, the disclaimed assets (and the income earned on those assets since Husband's death) will be distributed to Husband's estate. Pursuant to the terms of Husband's will and Trust, the disclaimed assets (and the income earned on those assets since Husband's death) will be distributed to the marital trust and/or the family trust. Wife proposes to disclaim her testamentary nongeneral power of appointment over the marital trust and the family trust. See, Ruling 1. It has been represented that Wife's one-half interest in the assets originally held in Account 2 (and the income earned on those assets since Husband's death) and Husband's one-half interest in the new securities the purchase of which Wife authorized after Husband's death (and the income earned on this one-half interest since Husband's death calculated pursuant to ' 25.2518-3(c)) will be segregated from the disclaimed property and held in Wife's Account 2.

After Husband's death, at Brokerage Firm 2's direction, Wife transferred the assets in Account 2 into Wife's Account 2, an account previously established at Brokerage Firm 2 in Wife's name. This action did not result in Wife's acceptance of Husband's one-half interest in Account 2 because under ' 25.2518-2(d)(1), the mere transfer of Account 2's assets to an account held in her name is not treated as Wife's acceptance of Husband's one-half interest in Account 2 or as benefiting Wife for purposes of ' 2518(b)(3).

Within the meaning of ' 25.2518-2(d)(1), however, Wife accepted the proceeds of the redeemed bond and securities and the cash by authorizing the reinvestment of these assets in the new securities. Since Husband and Wife each owned a one-half interest in the assets originally held in Account 2, the new securities are allocated one-half to Husband's interest in this account and one-half to Wife's interest in this account. Because Wife accepted Husband's one-half interest in the new securities within the meaning of ' 25.2518-2(d)(1), Wife cannot disclaim Husband's one-half interest in the new securities. Nevertheless, under ' 25.2518-3(c), since the new securities are severable assets, pursuant to ' 25.2518-3(c), Wife can make a pecuniary disclaimer of Husband's one-half interest in the assets originally held in Account 2 (and the income earned on these assets since Husband's death), minus Husband's one-half interest in the new securities (and the income earned on this one-half interest since Husband's death calculated pursuant to ' 25.2518-3(c)). See, ' 25.2518-3(a)(1)(ii).

Accordingly, based upon the facts submitted and the representations made, Wife's proposed disclaimer of Husband's one-half interest in the assets originally held in Account 2 (and the income earned on these assets since Husband's death), minus Husband's one-half interest in the new securities (and the income earned on this one-half interest since Husband's death calculated pursuant to ' 25.2518-3(c)), will be a qualified disclaimer provided both that the requirements of ' 2518(b) are satisfied and Wife's disclaimer of her testamentary nongeneral power of appointment over the marital trust and the family trust is a qualified disclaimer under ' 2518. See, ' 25.2518-2(e)(2) and ' 25.2518-2(e)(5), Example 5.

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.

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

Lorraine E. Gardner  
Senior Counsel, Branch 4  
(Passthroughs & Special Industries)

Enclosures: Copy for ' 6110 purposes