

Internal Revenue Service

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Person To Contact: _____, ID No.

Telephone Number:

In Re: Ruling Request

Refer Reply To:
CC:PSI:B04
PLR-109161-14
Date:
June 17, 2014

Legend:

Taxpayer =
Donor =
A =
B =
C =
D =
E =
Trust 1 =

Trust 2 =

Date 1 =
Date 2 =
Date 3 =
State =
State Statute 1 =
State Statute 2 =
State Statute 3 =
State Statute 4 =
State Statute 5 =
State Statute 6 =

Dear _____ :

This responds to your authorized representative's letter of February 10, 2014, in which Taxpayer requests a ruling that her execution and delivery of proposed

disclaimers will not constitute a transfer subject to federal gift tax. The facts and representations are as follows.

Trust 1

Donor executed Trust 1, an irrevocable trust, on Date 1, a date prior to January 1, 1977. Under Article Second, paragraph (b), of Trust 1, the trustees are to pay such sum or sums from time to time out of the income, accumulated income, or principal of Trust 1 to or for the benefit of A (Donor's child) or any of A's descendants, in the trustees' sole and absolute discretion in the event of illness, accident, other misfortune, or any emergency, or if, in the trustees' judgment, it is necessary to provide for the beneficiaries' comfortable maintenance, support, or education. Trust 1 will terminate 20 years after the death of the survivor of A, B, and C, and all of Donor's descendants living on Date 1. On termination, the remaining Trust 1 principal and undistributed income will be distributed free and clear of all trusts, to the descendants of A who have no living ancestor who is a descendant of A, *per stirpes*.

On Date 1, the date Trust 1 was executed, Donor had 11 living descendants consisting of three children (A, B, and C) and eight grandchildren, all of whom are still living. D is a child of A and was not living on Date 1. Taxpayer is D's child and A's grandchild. Under Article Second, paragraph (b), Taxpayer is one of the beneficiaries to whom the trustees may, in their discretion, make current distributions of income and principal. In addition, under Article Second, paragraph (b), Taxpayer will be entitled to receive a *per stirpital* portion of the Trust 1 remainder, if Taxpayer survives until the termination of Trust 1 and D dies prior to the time of distribution.

Taxpayer will attain the age of 18 on Date 3. Taxpayer proposes to disclaim her contingent right to receive any distribution from Trust 1 on termination of the trust. The disclaimer will be executed by Taxpayer within nine months after Date 3. Taxpayer has not received any discretionary distributions from Trust 1.

Trust 2

A executed Trust 2, an irrevocable trust, on Date 2, a date prior to January 1, 1977. Under Paragraph First of Trust 2, the trustees are to divide Trust 2 into three equal shares. Under Paragraph First, subparagraphs (a), (b) and (c), the income derived from the first one-third share is to be accumulated and added to principal. The income of the second one-third share is to be paid to A, and, on A's death, to E, if she survives A as his spouse. However, under Paragraph Third, subparagraph (d), A reserved the right, exercisable by will, to direct a contrary disposition of the income of this one-third share to be effective after A's death or E's death if she survives A as his spouse. The income of the remaining one-third share is to be paid to E so long as she is A's spouse or has survived A as his spouse, or to any

of A's descendants in the event of need occasioned by illness, accident or other misfortune, or in any emergency, or if in the trustee's discretion it is necessary for the comfortable maintenance, support or education of any beneficiary or of his or her family.

Under Paragraph First, subparagraph (d), after A's death, or on E's later death if she survives A as his spouse, the three shares of Trust 2 are to be combined into a single trust (less any portion of the second one-third share for which A has made a contrary testamentary disposition of the income pursuant to the right A reserved to do so in Paragraph Third, subparagraph (d)) along with accumulated income. Trust 2 is then to be divided into equal shares, one such share for each of A's then living children and deceased children leaving surviving issue, the surviving issue to take the deceased child's share, *per stirpes*. During the continuation of the trust term, the trustee is to pay to the beneficiaries (a child of A, if living, or if a child dies, his or her surviving issue by representation) of a respective share so much income of that share as the trustee in the trustee's discretion determines. In addition, under Paragraph First, subparagraph (e), after A's death, the trustee may distribute such principal as the trustee deems necessary to an income beneficiary in the event of illness, accident, other misfortune, or any emergency, or if, in the judgment of the trustee it is necessary for the comfortable maintenance, support or education of any beneficiary or of the beneficiary's family. Any amount paid is to be charged against the share from which the beneficiary is then receiving or entitled to receive income.

Under Paragraph First, subparagraph (d), Trust 2 is to terminate 20 years after the death of the last survivor of A, E, and those of A's children living on Date 2. On termination, Trust 2 principal and accumulated income will be distributed free and clear of all trusts, *per stirpes*, to A's descendants then living who have no living ancestor who is a descendant of A.

D was not yet born when A executed Trust 2 on Date 2. D is not one of the measuring lives determining the duration of Trust 2, hence D is a potential recipient of a one-third share of the remainder. Taxpayer is D's child, and A's grandchild. Taxpayer, as A's descendant, is entitled to distributions of income from a one-third share, described above, in the event certain needs arise. After A and E have both died, and if D has also died, Taxpayer, if then living, will be entitled, as a surviving issue of D, to distributions of income and principal of the Trust 2 share set aside with respect to D. It has been represented that E has died. Further, on termination of Trust 2, Taxpayer, if living, will be entitled to a distribution of all or a portion of the remainder of that share, *per stirpes*.

Taxpayer proposes to disclaim her contingent right to share in the distribution of Trust 2 on termination of the trust. The disclaimer will be executed by Taxpayer within nine months after Date 3. Taxpayer has not received any income or principal distributions from Trust 2.

Law and Analysis:

Trust 1 and Trust 2 are governed by the laws of State. State Statute 1 provides in part that any person of sound mind and 18 years of age or older may by last will devise his or her real or personal property. State Statute 2 provides in part that the legal age at which a person becomes competent to contract in State is 18 years.

State Statute 3 provides that a contingent future interest may be disclaimed in whole or in part at any time before, or within nine months after, beneficiaries of the interest have been fully ascertained and their interests vested. A vested interest subject to defeasance or divestment is deemed a contingent interest.

State Statute 4 provides in part 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 will 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. 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.

State Statute 5 provides that each separate interest in property is subject to disclaimer or acceptance and each separate interest, including any specific amount, part, fraction or asset thereof, or formula amount based on present or future facts independent of the disclaimant's volition, is subject to disclaimer or acceptance.

State Statute 6 provides that a disclaimer is made by a writing showing an unconditional refusal to accept a transfer, or a portion thereof, signed by the disclaimant, or representative, and delivered on or before nine months after the transfer, or by any later time provided in the particular case or pursuant to other provisions of this chapter, and before any acceptance of the disclaimed interest. Delivery of a disclaimer may be accomplished by delivery to the transferor, the transferor's personal representative or other legal representative, or the holder of the legal title to the property to which the interest related. A disclaimer involving an estate or property within the jurisdiction of the probate division of a circuit court may be filed in that division. The right to disclaim exists notwithstanding any intention to the contrary expressed by the transferor and notwithstanding any limitation on the disclaimant such as a spendthrift provision or similar restriction.

Section 2501(a) imposes a tax on the transfer of property by gift during any calendar year by any individual.

Section 2511(a) provides that the gift tax imposed under § 2501 applies 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 transfers that create 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 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: (1) is made within a reasonable time after knowledge of the existence of the transfer; (2) is unequivocal; (3) is effective under local law; and (4) is made before the disclaimant has accepted the property. *Compare with* § 2518 and §§ 25.2518-1 through 25.2518-3 (providing rules for determining whether a disclaimer is a qualified disclaimer effective for estate and gift tax purposes, in the case of the disclaimer of an interest in property that is created in the beneficiary disclaiming a transfer made after December 31, 1976).

As noted above, under § 25.2511-1(c), if the interest to be disclaimed was created before January 1, 1977, the disclaimant must disclaim the interest in the property within a reasonable time after knowledge of the existence of the transfer that created the interest to be disclaimed. In the case of a disclaimer of an interest in trust, in general, the transfer occurs when the trust is established rather than when the interest actually vests in the disclaimant, if the transferor has not reserved any power over the trust. *See Jewett v. Commissioner, 455 U.S. 305 (1982)*. However, the time limitation for making the disclaimer does not begin to run until the disclaimant has attained the age of majority and is no longer under a legal disability to disclaim. *Jewitt at 318*. *See also* § 2518(b)(2)(B) and § 25.2518-2(c)(1)(ii).

In this case, Taxpayer intends to disclaim her possible interest in the remainder of Trust 1 and Trust 2 within nine months of attaining age eighteen on Date 3. State Statutes 1 and 2 provide that Taxpayer has the authority at age eighteen to contract and execute a will. Under these circumstances, the proposed disclaimers will be considered to be made within the time prescribed in § 25.2511-1(c).

Under § 25.2511-1(c)(2), the disclaimers must be unequivocal. Rev. Rul. 76-56, 1976-1 C.B. 292, which considers the application of § 25.2511-1(c), concludes that a disclaimer is unequivocal if the disclaimant's act of refusal is unambiguous in its consequences; that is, the disclaimant must unqualifiedly refuse to accept ownership of the property. For example, a disclaimer is unequivocal if the disclaimed property must pass as otherwise provided in the instrument, and not pursuant to the direction of the disclaimant. In this case, the disclaimed interests will not pass pursuant to any direction

on the part of Taxpayer. State Statute 4 provides that Taxpayer's disclaimed interest will be 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. It further provides that 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. Cf. §§ 25.2518-3(a)(1)(i) and 25.2518-3(d), *Examples* (10) and (11) (regarding treatment of certain interests in the same property as separate interests eligible for qualified disclaimer treatment under § 2518).

Under § 25.2511-1(c)(2), the disclaimers must be effective under local law. In this case, State Statutes 3, 4, and 5 provide that an individual may make a valid disclaimer of any separate interest in property while retaining other separate interests in the same property. Further, the disclaimers will be timely under State Statute 3 because the disclaimers will be made before, or within nine months after, beneficiaries of the interest have been fully ascertained and their interests vested. Consequently, if Taxpayer satisfies the procedural requirements prescribed under State Statute 6, the disclaimers will be valid under local law.

Finally, under § 25.2511-1(c)(2), the disclaimant must not have accepted the property before the disclaimer. It has been represented that this is the case.

Accordingly, we conclude that, based on the facts submitted and representations made, assuming that the disclaimers are executed as proposed, the disclaimers with respect to Trust 1 and Trust 2 will not constitute transfers subject to the federal gift tax.

The ruling contained in this letter is based upon information and representations submitted by 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 ruling, it is subject to verification on examination. 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 Internal Revenue Code.

This ruling is directed only to Taxpayer. 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 Taxpayer's authorized representative.

Sincerely,

Lorraine E. Gardner

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

Enclosures: Copy for § 6110 purposes

cc: