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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B4
PLR-139288-14
Date:
December 01, 2014

Legend

- Wife =
- Husband =
- Wife's Account 1 =
- Wife's Account 2 =
- Husband's Account 1 =
- Husband's Account 2 =
- Trust =
- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
- State Statute 1 =
- State Statute 2 =
- Trust Company =

Dear :

This letter responds to a letter dated October 16, 2014, and subsequent correspondence, from your authorized representatives requesting a ruling under § 2518 of the Internal Revenue Code.

The facts submitted and the representations made are as follows.

Wife contributed all of the funds in Wife's Account 1. Wife's Account 1 consisted of publicly-traded stocks, bonds, other securities, and a money market account. Wife also contributed all of the funds in Wife's Account 2. Wife's Account 2 consisted of publicly-traded stocks and a money market account. On Date 1, Wife gratuitously transferred all

of the assets of Wife's Account 1 to Husband's Account 1. After Date 1, Wife also gratuitously added Husband as a joint owner with right of survivorship to Wife's Account 2. Pursuant to the account agreement governing Wife's Account 2 after Husband was added as a joint owner, Wife continued to have the right to unilaterally withdraw all of the funds from Wife's Account 2 without the consent of Husband. On Date 2, Wife died. Husband is the executor of Wife's estate.

After Wife transferred the assets of Wife's Account 1 to Husband's Account 1, Husband made cash withdrawals from Husband's Account 1 and transacted sales and purchases of securities in Husband's Account 1. Similarly, after Husband was added to Wife's Account 2 as a joint owner, Husband made cash withdrawals from Wife's Account 2 and transacted sales and purchases of securities in Wife's Account 2. Subsequently, Husband opened Husband's Account 2 and transferred all of the assets, except one security, in Wife's Account 2 to Husband's Account 2. Thereafter, Husband made cash withdrawals from Husband's Account 2 and made sales and purchases of securities in Husband's Account 2.

On or before Date 3, the date nine months after Date 1, Husband will execute a written, dated document that complies with State Statutes 1 and 2, identifies specific securities in Husband's Account 1, acknowledges his receipt of these securities on Date 1, and states his irrevocable and unqualified refusal to accept these securities (Proposed Disclaimer 1). Proposed Disclaimer 1 will not include any security in Husband's Account 1 that was purchased or sold from Date 1 through the date Husband executes Proposed Disclaimer 1. Husband will establish a brokerage account on behalf of Wife's estate (Estate Account 1) and will transfer to Estate Account 1 the securities identified in Proposed Disclaimer 1 and all of the income earned on these securities from Date 1 through the date Husband executes Proposed Disclaimer 1 and transfers these securities to Estate Account 1.

In addition, on or before Date 4, the date nine months after Wife's death on Date 2, Husband will execute a written, dated document that complies with State Statutes 1 and 2, identifies specific securities in Husband's Account 2 (previously in Wife's Account 2), acknowledges his receipt of these securities on Date 2, and states his irrevocable and unqualified refusal to accept these securities (Proposed Disclaimer 2). Proposed Disclaimer 2 will not include any security in Husband's Account 2 (or previously in Wife's Account 2) purchased or sold from Date 2 through the date Husband executes Proposed Disclaimer 2. Husband will establish a brokerage account on behalf of Wife's estate (Estate Account 2) and will transfer to Estate Account 2 the securities identified in Proposed Disclaimer 2 and all of the income earned on these securities from Date 2 through the date Husband executes Proposed Disclaimer 2 and transfers these securities to Estate Account 2.

Wife's will directs that her residuary estate be added to, held, and disposed of as an integral part of Trust. Trust is a revocable trust that became irrevocable at Wife's death.

Trust Article Four, paragraph 2 provides that upon Wife's death, after providing for a trust holding a residence, the remaining Trust property is to be divided into three shares to create three trusts, Fund A, Fund B, and Fund C.

Trust Article Five, paragraph 1, provides that the trustee may pay the income and principal of Fund A to Wife's issue, Husband, and Husband's parents for any eligible beneficiary's health, maintenance, support in reasonable comfort, and education. Article Five, paragraph 2, grants Husband a nongeneral power of appointment over the Fund A principal.

Trust Article Six, paragraph 1, provides that the trustee shall pay the income from Funds B and C and so much of the principal of Funds B and C as trustee shall deem advisable to or for the benefit of Husband for his health, maintenance, and support in reasonable comfort. Article Six, paragraph 2, grants Husband a nongeneral power of appointment over the principal of Funds B and C.

Trust Article Eleven, paragraph 3A, names Trust Company and Husband as co-trustees of Funds A, B, and C. Article Eleven, paragraph 3A, also grants Husband the power to remove any trustee and to appoint a successor trustee. Article Eleven, paragraph 7, provides that no trustee who is a beneficiary may participate in any discretionary distributions.

Trust Article Nineteen, paragraph 1, provides that, notwithstanding any other provision of Trust, if any property or its proceeds is added to any trust created under Trust agreement by means of a disclaimer by Husband or if disclaimed property is distributed to Trust by the executor of Wife's estate, then the trustee shall divide the trust to which the disclaimed property passes into two separate trusts so that the disclaimed property and any income attributable to the disclaimed property shall be allocated to one trust and the balance of the trust assets shall be allocated to the other trust, except that Husband shall have no power of appointment otherwise granted in Trust agreement over the trust to which the disclaimed property shall be allocated.

Ruling Requested

You have requested a ruling that Proposed Disclaimer 1 and Proposed Disclaimer 2 will be qualified disclaimers under § 2518.

Law

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, his legal representative, or the holder of the legal title to the property to which the interest relates no later than nine months after the later of 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)(3) of the Gift Tax Regulations provides that the nine-month period for making a disclaimer generally is to be determined with reference to the transfer creating the interest in the disclaimant. With respect to inter vivos transfers, a transfer creating an interest occurs when there is a completed gift for Federal gift tax purposes regardless of whether a gift tax is imposed on the completed gift.

Section 25.2518-2(c)(4)(iii) 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.

Section 25.2518-2(d)(1) provides that a qualified disclaimer of property 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 acceptance of such property or any of its benefits. Thus, 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. The regulation refers to § 25.2518-2(e) for rules relating to the effect of directing the redistribution of disclaimed property.

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 provided in paragraph (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 paragraph (e)(2)).

Section 25.2518-2(e)(2) provides that 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.

Section 25.2518-3(a)(1)(i) provides that 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.

State Statute 1 governs disclaimers of property passing under a nontestamentary instrument. State Statute 1 provides that (with an exception not applicable here), if a disclaimer is made pursuant to State Statute 1, and if the nontestamentary instrument does not provide for another disposition in the event of a disclaimer, and if the disclaimant is a natural person acting for himself or herself, the interest disclaimed shall devolve as if the disclaimant had died immediately before the effective date of such nontestamentary instrument.

State Statute 2 provides that the right to disclaim an interest is barred by any: (1) Assignment, conveyance, encumbrance, pledge or transfer of the interest or any part thereof, (2) written waiver of the right to disclaim such interest, or (3) acceptance of such interest or any of its benefits, provided for such purpose a fiduciary power shall not be deemed accepted unless it has been exercised.

Analysis

In the present case, Wife made a completed gift of the assets in Wife's Account 1 on Date 1 when Wife transferred these assets to Husband's Account 1 and parted with dominion and control over them. See § 25.2511-2(b). Wife's gift of the assets in Wife's Account 2 was not a completed gift, however, until Wife's death on Date 2 because Wife could unilaterally withdraw her contributions from Wife's Account 2 at any time prior to her death. See § 25.2511-1(h)(4). Consequently, pursuant to § 25.2518-2(c)(3), the nine-month disclaimer period began to run on Date 1 on Wife's gift of Wife's Account 1 assets and, pursuant to § 25.2518-2(c)(4)(iii), the nine-month disclaimer period began to run on Date 2 on Wife's gift of Wife's Account 2 (subsequently Husband's Account 2) assets.

It is represented that within nine months following Date 1, in order to implement Proposed Disclaimer 1, Husband will: (1) execute a written document that identifies specific securities, acknowledges his receipt of these securities on Date 1, and states his irrevocable and unqualified refusal to accept these securities, and (2) transfer from Husband's Account 1 to Estate Account 1 the identified specific securities and all of the income earned on these securities from Date 1 through the date Husband executes Proposed Disclaimer 1 and transfers these securities to Estate Account 1. In addition, within nine months following Date 2, in order to implement Disclaimer 2, Husband will:

(1) execute a written document that identifies specific securities, acknowledges his receipt of these securities on Date 2, and states his irrevocable and unqualified refusal to accept these securities, and (2) transfer from Husband's Account 2 the identified specific securities and all of the income earned on these securities from Date 2 through the date Husband executes Proposed Disclaimer 2 and transfers these securities to Estate Account 2. Thus, Proposed Disclaimer 1 and Proposed Disclaimer 2 will satisfy §§ 2518(b)(1) and (2).

Under § 2518(b)(3), a person cannot disclaim any interest in property the benefits of which he has accepted. Under § 25.2518-3(a)(1)(i) and (ii), the publicly traded stocks, bonds, other securities, and money market accounts in Husband's Account 1 and Husband's Account 2 (previously Wife's Account 2) are severable assets. Thus, Husband may accept and benefit from the cash and some of the securities and make a disclaimer with respect to the remaining securities. See Examples 1 and 17 of § 25.2518-3(d).

It is represented that the assets identified in Proposed Disclaimer 1 will be only securities that were not purchased or sold from Date 1 through the effective date of Proposed Disclaimer 1 and all of the income earned on these securities during that period. Similarly, it is represented that the assets to be identified in Proposed Disclaimer 2 will be only securities that were not purchased or sold from Date 2 through the effective date of Proposed Disclaimer 2 and all of the income earned on these securities during that period. Thus, under § 25.2518-2(d)(1), Husband is not treated as accepting the securities identified in Proposed Disclaimers 1 and 2 even though Husband directed (and may direct) the purchase and sale of certain other securities in Husband's Account 1 and Husband's Account 2 (previously in Wife's Account 2) prior to the effective date of the proposed disclaimers. As stated above, the securities are severable assets. Husband may make a qualified disclaimer with respect to certain securities while accepting the benefit of other securities in the account. See Examples 1 and 17 of § 25.2518-3(d).

In addition, Husband is not treated as accepting the benefits of the disclaimed assets as a result of his fiduciary powers. Although Husband is the executor of Wife's will and co-trustee of Trust, Husband has not exercised or retained a wholly discretionary power to direct the enjoyment of the assets identified in Proposed Disclaimer 1 or Proposed Disclaimer 2. See § 25.2518-2(e)(1) and (2). (See discussion of Husband's fiduciary powers over Trust property below.) Thus, Proposed Disclaimers 1 and 2 will satisfy § 2518(b)(3).

Proposed Disclaimers 1 and 2 also satisfy § 2518(b)(4). It is represented that Proposed Disclaimers 1 and 2 will comply with State Statutes 1 and 2. Under State Statute 1, the securities in Proposed Disclaimer 1 will devolve as if Husband had died immediately before the effective date of the instrument transferring assets from Wife's Account 1 to Husband's Account 1. Similarly, under State Statute 1, the securities identified in

Proposed Disclaimer 2 will devolve as if Husband had died immediately before the effective date of the instrument adding Husband as a joint tenant to Wife's Account 2. Thus, under State Statute 1, the securities in Proposed Disclaimers 1 and 2 will pass under the residuary clause of Wife's will to Trust. Consequently, for purposes of § 25.2518-2(e)(1) and (2), the disclaimed property passes to the beneficiaries of Trust without any direction by Husband.

This conclusion is the same even though Husband is a beneficiary and co-trustee of trust. Husband is prohibited by Article Eleven of Trust from participating in any discretionary distributions from Trust. In addition, pursuant to Article Nineteen, Husband may not exercise his nongeneral power of appointment with respect to the disclaimed property. Moreover, although Husband has a right to remove and replace his co-trustee, Articles Five and Six limit such co-trustee's discretionary distributions, and thus Husband's retained fiduciary power, to an ascertainable standard. See § 20.2041-1(b)(1). Consequently, for purposes of § 25.2518-2(e)(1) and (2), Husband is not treated as directing the beneficial enjoyment of the disclaimed property due to his interests as a beneficiary of Trust, his power as a co-trustee of Trust, or his power to remove and replace a co-trustee of Trust. See §§ 25.2518-2(e)(1) and (2), and Example 6 of § 25.2518-2(e)(5).

Accordingly, based on the facts submitted and the representations made, we conclude that Proposed Disclaimers 1 and 2 are qualified disclaimers under § 2518.

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) of the Code 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,

Melissa C. Liquerman
Chief, Branch 4
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter
Copy for § 6110 purposes

cc: