

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:

Telephone Number:

Refer Reply To:
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Date:
April 23, 2018

Legend

Beneficiary	=
Trust	=
Grantor	=
Great-grandfather	=
Great-grandmother	=
Great-uncle	=
Great-aunt	=
Taxpayer	=
State	=
State Statute	=
Date 1	=
Date 2	=
Date 3	=

Dear :

This letter responds to your personal representative's letter of December 22, 2017, and subsequent correspondence, requesting rulings on the federal gift tax consequences of a proposed disclaimer of an interest in Trust.

The facts and representations submitted are summarized as follows:

On Date 1, Grantor established and funded Trust, an irrevocable trust, for the primary benefit of Beneficiary and Beneficiary's issue. Date 1 is a date prior to 1977.

The terms of Trust provide that during Beneficiary's lifetime, any part or all of the net income and principal of the trust may be distributed to or for such of Beneficiary and Beneficiary's issue as the trustee in his sole discretion shall determine. Upon the death of Beneficiary, the trustee is to distribute the entire balance of principal and income of Trust to such of the then-living lineal descendants of Great-grandfather and

Great-grandmother and their spouses, and upon such estates, terms, trusts, and conditions as Beneficiary appoints by will, provided that any appointment to a spouse of any such descendant shall be limited to an interest of income only. With respect to all such principal and income that is not otherwise appointed, the trustee is to distribute the entire balance of principal and income of the trust to the lawful issue of Beneficiary then living, *per stirpes*, or, if no lawful issue is then living, in equal shares to the trustees of certain trusts created by Grantor for the benefit of the great-grandchildren of Great-grandfather and Great-grandmother.

Trust was modified several times after 1976. The modifications relate to the succession, powers, and responsibilities of the trustees.

Beneficiary executed a will on Date 2. On Date 3, Beneficiary died without issue. In Section 4.4 of Beneficiary's will, Beneficiary exercised her power of appointment over Trust by appointing all remaining principal and undistributed income of Trust to the then-living descendants of the marriage of Great-uncle and Great-aunt, *per stirpes*. Great-uncle is the son of Great-grandfather and Great-grandmother.

Taxpayer is a grandchild of Great-uncle and Great-aunt and is among the class of appointees due to receive property pursuant to Beneficiary's exercise of her power of appointment over Trust in Beneficiary's will. After Beneficiary's death, Taxpayer received a copy of the will, as well as a copy of Trust.

Taxpayer represents that, other than a general awareness of the possible existence of numerous trusts established within the family, Taxpayer had no actual knowledge of Trust during Beneficiary's lifetime. Taxpayer represents that he did not receive a copy of Trust, or know of any of the terms of Trust, during Beneficiary's lifetime. Taxpayer also represents that at no time has Taxpayer received any benefits from Trust.

Taxpayer proposes to disclaim his entire interest in Trust. It is represented that the disclaimer will be valid under local law in that (a) Taxpayer has not received or accepted any interest in, nor exercised any powers over the property to be disclaimed or any benefits therefrom at any time or since the date of Beneficiary's death, (b) the disclaimer is in writing, irrevocable and unqualified, describing the interests to be disclaimed and is to be signed by Taxpayer, and (c) the disclaimer will be delivered to the probate court in which the estate of Beneficiary is administered on or before the date which is nine months after the date of Beneficiary's death.

You have requested the following rulings:

- 1) Section 25.2511-1(c)(2) of the Gift Tax Regulations applies to Taxpayer's disclaimer of his interest in Trust;

- 2) Taxpayer's disclaimer of his interest within nine months after learning of the existence of his interest in Trust will be deemed to be made within a reasonable time after knowledge of the existence of the transfer to such trust for purposes of § 25.2511-1(c)(2); and
- 3) Taxpayer's disclaimer of his interest in Trust within nine months of Beneficiary's death is not a taxable gift under § 2511 of the Internal Revenue Code.

Law and Analysis

Section 2501 provides for the imposition of a gift tax on the transfer of property by gift. Section 2511 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) 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 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 local law. There can be no refusal of ownership of property after its acceptance. In the absence of 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. Whether there has been an unqualified refusal to accept ownership is dependent on the facts and circumstances of each case. 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). The requirement in the regulations that the disclaimer must be made within a "reasonable time" is a matter of federal, rather than local law. Jewett, 455 U.S. at 316. Whether a period of time is reasonable under the regulations is dependent on the facts and circumstances presented. See, e.g., Jewett v. Commissioner, 70 T.C. 430, 438 (1978), aff'd, 455 U.S. 305 (1982).

State Statute governs the disclaimer of interests created under a will. Under State Statute, a person to whom any property or interest therein passes may disclaim the property or interest in whole or in part by delivering or filing a written disclaimer. The disclaimer shall describe the property or part or interest disclaimed, be signed by the disclaimant or his representative, and declare the disclaimer and the extent thereof. In the case of an interest passing by reason of the death of any person, an executed counterpart of the disclaimer may be filed with the clerk of the circuit court in the county in which the estate of the decedent is administered, or, if administration has not been commenced, in which it could be commenced. Unless expressly provided otherwise in the testamentary instrument, the property, part or interest disclaimed shall descend or be distributed as if the disclaimant had predeceased the date of the transfer. The right to disclaim property or a part thereof shall be barred by an acceptance of the property, part or interest by the disclaimant or his representative.

In the instant case, Trust was created prior to January 1, 1977, and, under its terms, Taxpayer was a contingent beneficiary. Based on the facts submitted and the representations made, we conclude that the taxable transfer creating Taxpayer's interest in Trust occurred on Date 1, when Trust was created. See Jewett v. Commissioner, 455 U.S. 305. Accordingly, we conclude that § 25.2511-1(c)(2) applies in determining the effectiveness of the proposed disclaimer of Taxpayer's interest in Trust for federal transfer tax purposes.

Furthermore, as discussed above, under § 25.2511-1(c)(2), the disclaimer will not be subject to the gift tax if it is made within a reasonable time after the disclaimant obtains knowledge of the transfer creating the interest. The question of what constitutes a reasonable time is dependent on federal, rather than state, criteria and is generally dependent on the facts and circumstances presented. We note that a disclaimer made within nine months of the disclaimant learning of the existence of the transfer creating the interest would generally satisfy the reasonable time requirement of the regulations, in the absence of facts to the contrary. Cf. § 25.2518-2(c)(1) (providing in the case of a qualified disclaimer that the disclaimer must be delivered no later than nine months after the transfer creating the interest in the disclaimant or nine months after the disclaimant attains age 21). Accordingly, we conclude that Taxpayer's disclaimer of his interest in Trust if made within nine months of learning of the existence of Trust would be timely for purposes of § 25.2511-1(c)(2). We express or imply no opinion as to when Taxpayer first obtained the requisite knowledge of the transfer creating the interest.

In addition to the reasonable time requirement under § 25.2511-1(c)(2), there must be an unqualified refusal to accept the property and the proposed disclaimer must meet the requirements of local law. Taxpayer represents that he has not received or accepted any interest in, nor exercised any powers over the property to be disclaimed or any benefits therefrom at any time or since the date of Beneficiary's death. Taxpayer proposes to disclaim in a written instrument that will be filed within nine months of the death of Beneficiary and will be delivered to the probate court in which the estate of

Beneficiary is administered. Taxpayer further represents that the disclaimer will be in writing, irrevocable and unqualified, will describe the interests to be disclaimed and will be signed by Taxpayer. Accordingly, based on the facts submitted and the representations made, we conclude that, assuming Taxpayer does not accept any of the benefits from Trust prior to the disclaimer and assuming Taxpayer's disclaimer is made within nine months of learning of the existence of Trust, Taxpayer's disclaimer of his interest in Trust within nine months of Beneficiary's death will not be a taxable gift under § 2511.

In accordance with the Power of Attorney on file with this office, we have sent a copy of this letter to your authorized representatives.

Except as expressly provided herein, we neither express nor imply any opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

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.

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.

Sincerely,

Karlene M. Lesho

Karlene M. Lesho
Senior Technician Reviewer, Branch 4
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures

Copy for § 6110 purposes
Copy of this letter

cc: