

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:B09-PLR-114759-00
Date:
October 24, 2000

LEGEND:

Taxpayer =

Grantor =

Trust =

Date 1 =

A =

Trustee =

Beneficiary 1 =

Beneficiary 2 =

Family =

Child 1 =

Child 2 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Descendant 1 =

Descendant 2 =

Descendant 3 =

Descendant 4 =

State =

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Dear :

This is in response to your letter dated July 25, 2000, requesting a ruling that Taxpayer's disclaimer of his remainder interest in Trust within nine months of Date 3 will not constitute a taxable gift under § 2501 of the Internal Revenue Code.

FACTS:

The information submitted and representations made are summarized as follows: On Date 1, Grantor transferred 34 shares of the capital stock of A to Trustee in trust for the benefit of Beneficiary 1 and Beneficiary 2.

Section 3 of the Trust provides that certain amounts of income of the Trust were to be distributed monthly to Beneficiary 1 and Beneficiary 2, until Beneficiary 2 attained the age of 21.

Section 4 of the Trust provides that when Beneficiary 2 attains 21 years of age, income is to be distributed, in equal shares, to Beneficiary 1 and Beneficiary 2. Upon the death of either, all income is to be distributed to the survivor for her lifetime.

Section 2 of the Trust provides, in part, that upon the death of the last to die of Beneficiary 1 and Beneficiary 2, the Trust is to terminate and the trust estate distributed in equal shares, to the sons of Grantor, Child 1 and Child 2. If neither Child 1 nor Child 2 is then living, the share of such deceased child is to be distributed, per stirpes, to such child's then living descendants.

Beneficiary 1 died on Date 2. Beneficiary 1 was survived by Beneficiary 2. On the death of Beneficiary 1, Beneficiary 2 became entitled to all of the income of the Trust. Beneficiary 2 died on Date 3. Pursuant to the terms of the Trust, the Trust terminated as of Date 3. At Beneficiary 2's death, however, both of Grantor's sons, Child 1 and Child 2, were deceased. Child 1 died on Date 4, and Child 2 died on Date 5. Accordingly, upon Beneficiary 2's death, the Trustee is to make distributions, per stirpes, of the trust estate to the living descendants of Child 1 and Child 2. The following are the living descendants of Child 1 and Child 2: Taxpayer, Descendant 1, Descendant 2, Descendant 3, and Descendant 4.

Taxpayer was 14 years old when the Trust was created. Taxpayer represents that he became aware, years later, that Grantor had created a trust for the benefit of the Family and had contributed A stock to the Trust. Taxpayer represents that he first learned of his remainder interest in Trust shortly after Date 3. Taxpayer further represents that prior to receiving notification from Trustee that he was a remainder beneficiary of Trust, he did not have knowledge of any of the terms of the Trust or the nature of the remainder interests, and had assumed that all interests under the Trust would pass to heirs or members of the Family when the Trust terminated.

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Taxpayer represents that he has not received or accepted any income or principal of the Trust or taken any other action precluding a disclaimer under State law. Taxpayer wishes to disclaim his remainder interest in Trust under the laws of State. The law of State gives a beneficiary the right to disclaim in whole or in part the right of succession to any property or interest therein by delivering or filing a written disclaimer. The law of State further provides,

[I]f the property or interest has devolved to the disclaimant under a nontestamentary instrument or contract, the disclaimer shall be delivered or filed, as to a present interest, not later than nine months after the effective date of the nontestamentary instrument or contract and, as to a future interest, not later than nine months after the event determining that the taker of the property or interest has become finally ascertained and his interest is indefeasibly vested. If the person entitled to disclaim does not have actual knowledge of the existence of the interest, the disclaimer shall be delivered or filed not later than nine months after he has actual knowledge of the existence of the interest.

RULING REQUESTED:

Taxpayer's proposed disclaimer of his remainder interest in Trust within nine months of Date 3 will be made within a reasonable time after knowledge of the existence of the transfer and will not constitute a taxable gift under section 2501 of the Code.

LAW AND ANALYSIS:

Section 2501(a)(1) imposes a tax, for each calendar year, on the transfer of property by gift during such taxable year by any individual, resident or nonresident.

Section 2511 provides that the tax imposed by section 2501 shall apply 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.

Treas. Reg. § 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 the property transferred from a decedent, 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 the local law.

The Supreme Court has recognized that, under the regulation, an interest must

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be disclaimed within a reasonable time after the disclaimant obtains knowledge of the transfer creating the interest to be disclaimed, rather than a reasonable time after the distribution or vesting of the interest. Jewett v. Commissioner, 455 U.S. 305 (1982).

We conclude that, based on the facts presented and representations made, Taxpayer's disclaimer will be made within a reasonable time after knowledge of the existence of the transfer under Treas. Reg. § 25.2511-1(c)(2). Therefore, if the disclaimer is valid and effective under the governing local law and if the other requirements of Treas. Reg. § 25.2511-1(c)(2) are satisfied, Taxpayer's disclaimer will not constitute a taxable gift under section 2501.

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. If there is a change in material fact or law (local or federal) before the transactions considered in this ruling take effect, the ruling will have no force or effect. 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.

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.

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

Sincerely yours,
Melissa C. Liquerman
Acting Branch Chief, Branch 9
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure:

Copy for section 6110 purposes