DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

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TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

JAN 2 5 2006

T:EP:RA:T3

UICS: 401.06-00
401.06-02
408.06-00

LEGEND:

Decedent	=
Wife	=
Daughter 1	=
Daughter 2	=
Company 1	=
Company 2	=
State	=
County	=
Court	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
Date 6	=
Citation 1	=
Citation 2	=
Citation 3	=
Statute 1	=
Statute 2	=
Statute 3	=

Dear :

This is in response to the , letter, as supplemented by correspondence dated , in which you, through your authorized representative, request a letter ruling under section 2518(b) of the Internal Revenue Code ("Code"). The following facts and representations support your ruling request.

FACTS:

On Date 1, , Decedent, a resident of State, opened an IRA with Company 1. The IRA agreement designated his wife, Wife, as the primary beneficiary and Daughters 1 and 2 as contingent beneficiaries of the IRA in the event Wife did not survive Decedent. Subsequently, Decedent transferred all of the assets from the Company 1 IRA to an IRA established with Company 2, which Decedent opened on Date 2, . Under the Company 2 agreement, Wife was designated as the primary beneficiary of the Company 2 IRA. However, no contingent beneficiaries were designated under the agreement.

Decedent died testate on Date 3, . Wife died shortly thereafter on Date 4, . Article Fifth of Decedent's will provides, in relevant part, that in the event that Wife does not survive Decedent or if Wife dies within sixty days of Decedent, the rest, residue, and remainder of Decedent's estate is to pass to Decedent's two daughters, in equal shares, per stirpes. On Date 5, , which was within nine months of Decedent's death, Daughter 1, in her capacity as personal representative of Wife's estate, disclaimed each and every interest which Wife or her estate had in the Company 2 IRA.

On Date 6, , Court entered an order reforming the beneficiary designation of the Company 2 IRA nunc pro tunc as of Date 2, , (the date the IRA was opened). Under the beneficiary designation, as reformed, Daughters 1 and 2 were designated as the contingent beneficiaries of the Company 2 IRA (as was the case with respect to the Company 1 IRA). The order also approved the disclaimer of Wife's interest in the Company 2 IRA. The disclaimer was executed, approved by the Probate Court, received by the personal representative of Decedent's estate and recorded in the public records of County within nine months after the date of Decedent's death. The taxpayer has submitted an affidavit from the individual who assisted Decedent in establishing the Company 2 IRA. The affiant states that Decedent advised the affiant that the Company 2 IRA was to have the same beneficiaries as the Company 1 IRA. However, his instructions were not implemented and Daughter 1 and Daughter 2 were not designated as contingent beneficiaries.

The taxpayer represents that neither Wife nor her estate had made any voluntary assignment of or transfer of, contract to assign or transfer, or encumbrance of, given a written waiver of the right to disclaim the succession to and any interest in, and had not made any sale or other disposition of an interest in the IRA. Furthermore, neither Wife nor her estate had accepted the IRA or any interest in the IRA.

RULING REQUESTED:

That the above-referenced disclaimer of the Company 2 IRA is a valid disclaimer within the meaning of Code section 2518(b) and, as a result of the disclaimer, Daughter 1 and Daughter 2 became equal fifty percent (50%) beneficiaries of the Company 2 IRA.

LAW AND ANALYSIS:

Section 2518(a) of the Internal Revenue Code provides that, if a person makes a qualified disclaimer with respect to any interest in property, then for purposes of the estate, gift, and generation-skipping transfer taxes, the interest will be treated as if it had never been transferred to the disclaimant. Section 2518(b) defines the term "qualified disclaimer" to mean an irrevocable and unqualified refusal by a person to accept an interest in property but only if:

(1) such refusal is in writing;

(2) such writing is received by the transferor of the interest, the transferor's legal representative, or the holder of the legal title to the property to which the interest relates not later than the date which is nine months after the later of the date on which the transfer creating the interest in such person is made, or the day on which such person attains age 21;

(3) such person has not accepted the interest or any of its benefits; and

(4) as a result of such refusal, the interest passes without any direction on the part of the person making the disclaimer and passes either to the spouse of the decedent, or to a person other than the person making the disclaimer.

Section 25.2518-1(b) of the Gift Tax Regulations provides, in part, that if a person makes a qualified disclaimer then, for purposes of federal estate, gift, and generation-skipping transfer tax provisions, the disclaimed interest in property is treated as if it had never been transferred to the person making the qualified disclaimer. Instead, it is considered as passing directly from the transferor of the property to the person entitled to receive the property as a result of the disclaimer. Accordingly, a person making a qualified disclaimer is not treated as making a gift.

Section 25.2518-2(b) provides that a disclaimer is a qualified disclaimer only if it is in writing and signed either by the disclaimant or the disclaimant's legal representative.

Under applicable state law, a person may disclaim, in whole or in part, conditionally or unconditionally, any interest in or power over property. Further, with court approval, a fiduciary (defined as including a personal representative) may disclaim an interest in or power over property. Statute 1. Generally, if the instrument does not contain a provision directing disposition of the property in the event of a disclaimer, then, if the disclaimant is an individual, the disclaimed interest passes as if the disclaimant had died immediately before the interest was created. Statute 2. Under Statute 3, generally, a disclaimer may be made at any time. In

addition, under applicable State law, an inter vivos revocable trust can be reformed after the death of the settler for a unilateral drafting mistake, if clear and convincing evidence demonstrates that a unilateral drafting error was made. Citations 1 and 2. See also, Citation 3 (where the court declined to reform the instrument in the absence of clear and convincing proof of a drafting mistake.)

In this case, Wife's legal representative, on Wife's behalf, disclaimed her and her estate's interest in the Company 2 IRA. The disclaimer was in writing, delivered within 9 months of the Decedent's death, and Wife did not accept any of the disclaimed interest. Further, the court order reforming the Company 2 IRA beneficiary designation was consistent with State law.

CONCLUSION:

Accordingly, based on the facts presented and the representations made, we conclude with respect to your ruling request that:

> The above-referenced disclaimer constituted a qualified disclaimer under section 2518(b). Further, under applicable State law, as a result of the disclaimer, Wife is treated as having predeceased the Decedent with respect to the disclaimed interest. Accordingly, the Company 2 IRA proceeds passed equally to Daughters 1 and 2 as contingent beneficiaries of the Company 2 IRA.

This ruling letter is based on the assumption that the IRAs referenced herein either were or are valid within the meaning of Code section 408 at all times relevant thereto. It also assumes the correctness of all facts and representations contained therein.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with the Service, the original of this letter ruling is being sent to you and a copy to your authorized representatives.

If you wish to inquire about this ruling, please contact , Esq. (I.D. #), at . Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,

Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:
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