Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:PSI:4
PLR-104289-12
Date: JULY 18, 2012

Re:

Legend:

Decedent =
Spouse =
Date 1 =
Date 2 =
Trust =

Family Trust =
Trustee =
A =
B =
C =
D =
State =
State Statute =

Dear :

This letter responds to your letter dated January 26, 2012, requesting a ruling concerning the application of § 2518 of the Internal Revenue Code to a disclaimer.

The facts and representations submitted are summarized as follows. Prior to Decedent's death, Decedent established a retirement plan trust, Trust, to benefit Decedent during his life. Trust held an Individual Retirement Account (IRA). Prior to his death, the required minimum distributions (RMDs) from the IRA were automatically deposited into a bank account held by Trust.

On Date 1, Decedent died testate survived by his wife, Spouse, and their four children. At death, the IRA was valued at $A. The Beneficiary Designation Form

(Form) for the IRA listed Spouse as the primary beneficiary. For two months after Decedent's death, the monthly IRA distributions, equaling $B, were made and automatically deposited into the bank account for Spouse. After those payments, the monthly IRA distributions were cancelled. During the two months the withdrawals equaled $C. The amount of distributions for the year of death exceeded the RMDs for that account. No other amounts have been paid from the IRA. Spouse has made no investment decisions with respect to the IRA.

The terms of Trust provide that, upon Decedent's death, Trust would be divided into two trusts, a Marital Trust and a Family Trust. Pursuant to the Form and the terms of Trust, if Spouse survived Decedent and disclaimed her interests in the IRA, the disclaimed property passes to the Marital Trust, and, in the event, Decedent did not elect to treat the Marital Trust as qualified terminable interest property, then the disclaimed property would pass to Family Trust. It is represented the Decedent did not make a QTIP election for Marital Trust.

Spouse is disabled. Her son, Son, is serving as Attorney-in-Fact. Under Spouse's Power of Attorney, her Attorney-in-Fact has the power to disclaim any property or interest in property to which Spouse is entitled. Under State Statute, an Attorney-in-Fact may disclaim property for the disclaimant. On Date 2, within nine months of Decedent's death, Attorney-in-Fact for Spouse irrevocably disclaimed Spouse's interest in the balance of the IRA and a proportionate amount of income attributable to such balance, totaling $D. Pursuant to the disclaimer, the disclaimed property passed into Family Trust. The trustee of Family Trust is Trustee, a corporate trustee. Spouse is the sole beneficiary of Family Trust. With respect to IRA benefits payable to Family Trust, during Spouse's lifetime, Trustee is required to withdraw each year from the IRA the greater of the RMD for that year and that portion of the IRS benefits that constitutes the accounting income of the IRA benefits. Additionally, Trustee shall withdraw so much of the net income and principal of the IRA benefits payable to the Family Trust as Trustee determines is necessary for Spouse's health, education, maintenance, and support. Family Trust terminates upon the death of Spouse and the balance of the trust will be administered under Article Sixth of Trust.

Spouse has asked for a ruling that the disclaimer by Spouse of her interest in the IRA is a qualified disclaimer under § 2518 even though prior to making the disclaimer, the Spouse received from the IRA amounts in excess of the required minimum distribution for the year of Decedent's death.

Law and Discussion

Section 2518 sets forth the requirements that must be met for a disclaimer to be treated as a qualified disclaimer for federal gift tax purposes.

Section 2518(a) provides that if a person makes a qualified disclaimer with

respect to any interest in property, then for purposes of the federal estate, gift and generation-skipping transfer tax, such 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 that is 9 months after the later of the date on which the transfer creating the interest in such person is made, or the day that the 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 the 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(d)(1) provides that a qualified disclaimer cannot be made with respect to an interest in property if the disclaimant has accepted the interest or any of the benefits, expressly or impliedly, prior to making the disclaimer. Acceptance is manifested by an affirmative act that 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 the property. However, merely taking delivery of an interest or 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 the decedent.

Section 25.2518-2(e)(1) provides that a disclaimer is not a qualified disclaimer unless the disclaimed interest passes without direction on the part of the disclaimant to a person other than the disclaimant (except as provided in paragraph (e)(2) of this section). If there is an express or implied agreement that the disclaimed interest in property is to be given or bequeathed to a person specified by the disclaimant, the

disclaimant shall treated as directing the transfer of the property interest. 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) of this section).

Section 25.2518-2(e)(2) provides that in the case of a disclaimer made by a decedent's surviving spouse with respect to property transferred by the decedent, the disclaimer satisfies the requirements of this paragraph (e)(2) 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 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 provides rules regarding the circumstances under which an individual may make a qualified disclaimer of less than the individual's entire interest in property and may accept the remaining interest of the property. Section 25.2518-3(a) generally provides that each interest in property that is separately created by the transferor is treated as a separate interest in property. Section 25.2518-3(b) provides that a disclaimer of an undivided portion of a separate interest in property that meets the other requirements of a qualified disclaimer under § 2518(b) and the corresponding regulations is a qualified disclaimer. An undivided portion of a disclaimant's separate interest in property must consist of a fraction or percentage of each and every substantial interest or right owned by the disclaimant in the property and must extend over the entire term of the disclaimant's interest in the property and in other property into which the property is converted.

Section 25.2518-3(c) provides that a disclaimer of a specific pecuniary amount out of a pecuniary or nonpecuniary bequest or gift which satisfies the other requirements of a qualified disclaimer under § 2518(b) and the corresponding regulations is a qualified disclaimer provided that no income or other benefit of the disclaimed amount inures to the benefit of the disclaimant either prior to or subsequent to the disclaimer. Thus, following the disclaimer of a specific pecuniary amount from a bequest or gift, the amount disclaimed and any income attributable to that amount must be segregated from the portion of the gift or bequest that was not disclaimed. Such a segregation of assets making up the disclaimer of a pecuniary amount must be made on the basis of the fair market value of the assets on the date of the disclaimer or on a basis that is fairly representative of the value changes that may have occurred between the date of transfer and the date of the disclaimer. The regulation further provides that

a pecuniary amount that is distributed to the disclaimant from the bequest or gift prior to the disclaimer is treated as a distribution of corpus from the bequest or gift. However, the acceptance of a distribution from the bequest or gift is considered an acceptance of a proportionate amount of the income earned by the bequest or gift. The regulation provides a formula to determine the proportionate share of the income considered to be accepted by the disclaimant at the time of the disclaimer, as follows:

Total amount of the distributions received by the disclaimant out of the bequest or gift / Total value of the bequest or gift on the date of transfer x Total amount of income earned by the bequest or gift between the date and the date of transfer of disclaimer.

In Rev. Rul. 2005-36, 2005-1 C.B. 1368, a beneficiary received RMDs from an IRA. The Service ruled that receipt of the RMD constitutes acceptance of that portion of the corpus of such account, plus the income attributable to that amount. However, the Service also ruled that if the beneficiary disclaims the remaining balance of the IRA, assuming the other requirements of § 2518 are satisfied, the beneficiary's acceptance of the RMD amounts does not preclude the beneficiary from making a qualified disclaimer with respect to the balance of the IRA.

In this case, the automatic deposits into the bank account held by Trust to benefit Spouse continued for two months after the Decedent's death and then were cancelled. During the two months the withdrawals equaled $C. The facts in this case are similar to the facts in Rev. Rul. 2005-36. Similar to the revenue ruling, Spouse has accepted the benefit of $C and the income attributable to $C. However, assuming the other requirements of § 2518 are satisfied, Spouse's acceptance of the RMDs amounts does not preclude Spouse from making a qualified disclaimer with respect to the balance of the IRA.

In this case, as a result of Spouse's disclaimer, the balance of the IRA passed to Family Trust. The terms of Family Trust were established by Decedent when he created Trust. Accordingly, the disclaimed property did not pass pursuant to the direction of Spouse. With respect to IRA benefits payable to Family Trust, during Spouse's lifetime, Trustee is required to withdraw each year from the IRA the greater of the RMD for that year and that portion of the IRS benefits that constitutes the accounting income of the IRA benefits. Additionally, Trustee shall withdraw so much of the net income and principal of the IRA benefits payable to the Family Trust as Trustee determines is necessary for Spouse's health, education, maintenance, and support. Family Trust terminates upon the death of Spouse and the balance of the trust will be administered under Article Sixth of Trust. Accordingly, pursuant to the terms of Trust and Family Trust, Spouse does not have any right to direct the beneficial enjoyment of the disclaimed property.

Based upon the facts provided and representations made, we conclude that the

requirements of § 2518 are satisfied in this case. Accordingly, Spouse's disclaimer of her interest in the balance of the IRA is a qualifed disclaimer under § 2518 even though prior to making the disclaimer, Spouse receive from the IRA amounts in excess of the RMD for the year of Decedent's death.

Except as expressly provided herein, we express no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code.

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.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

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,

Lorraine E. Gardner, Senior Counsel
Branch 4
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures

Copy for section 6110 purposes

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