

**Internal Revenue Service**

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:  
CC:PSI:B04 - PLR - 104600-03  
Date:

Re:

MAY 08, 2003

LEGEND

- Taxpayer -
- Decedent -
- A -
- Date 1 -
- Date 2 -
- Date 3 -
- Date 4 -
- State 1 -
- State 2 -
- x -
- State 1 Statute 1 -
- State 1 Statute 2 -
- State 1 Statute 3 -

Dear :

This is in response to your letter from your authorized representative dated January 6, 2003, requesting a ruling under section 2518 of the Internal Revenue Code.

The facts and representations submitted are summarized as follows: Decedent, Taxpayer's father, died intestate on Date 1. Decedent's estate is currently being administered under the laws of State 1. A, Decedent's sister, is the personal representative of Decedent's estate. At the time of Decedent's death, Decedent was not married and had only one child, Taxpayer.

Taxpayer was born on Date 2. Taxpayer is a resident of State 2. At the time of Decedent's death, Taxpayer was a minor. Taxpayer is currently x years old, and is considered an adult under the laws of both State 1 and State 2. Taxpayer will be 21 years old on Date 3.

It has been represented that Taxpayer has not received any assets or benefits from Decedent's estate. Taxpayer intends to irrevocably disclaim a portion of the property he would otherwise receive from Decedent's estate.

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The law of State 1 governs Decedent's intestate estate and Taxpayer's proposed disclaimer. Under State 1 law, a guardian may disclaim for the minor under certain circumstances with the approval of the Court. No such action was taken by Taxpayer's guardian.

You have requested a ruling that Taxpayer's disclaimer will be a qualified disclaimer under section 2518 of certain assets that are subject to State 1 administration until Date 4, the date which is 9 months after Taxpayer's twenty-first birthday, provided that A consents to the recording of said disclaimer more than 9 months after the date of Decedent's death.

Section 2501 provides that a gift tax is imposed for each calendar year on the transfer of property by gift by an individual.

Section 2511 provides that the gift tax 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.

Section 25.2511-1(c)(1) of the Gift Tax Regulations provides that the gift tax applies to gifts indirectly made. Any transaction in which an interest in property is gratuitously passed or conferred upon another, regardless of the means or device employed, constitutes a gift subject to tax. However, in the case of a transfer creating an interest in property made after December 31, 1976, this paragraph (c)(1) of section 20.2511-1 shall not apply to the donee if, as a result of a qualified disclaimer by the donee, the property passes to a different donee. Nor shall it apply to a donor if, as a result of a qualified disclaimer by the donee, a completed transfer of an interest in property is not effected.

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 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

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(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) 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(d)(3) provides that a beneficiary who is under 21 years of age has until 9 months after his twenty-first birthday in which to make a qualified disclaimer of his interest in property. Any actions taken with regard to an interest in property by a beneficiary or a custodian prior to the beneficiary's twenty-first birthday will not be an acceptance by the beneficiary of the interest.

Section 25.2518-2(d)(3), Example (11) provides that F made a gift of 10 shares of stock to G as custodian for H under the State X Uniform Gifts to Minors Act. At the time of the gift, H was 15 years old. At age 18, the local age of majority, the 10 shares were delivered to and registered in the name of H. Between the receipt of the shares and H's 21st birthday, H received dividends from the shares. Within 9 months of attaining age 21, H disclaimed the 10 shares. Assuming H did not accept any dividends from the shares after attaining age 21, the disclaimer by H is a qualified disclaimer under section 2518.

Under State 1 Statute 1, a beneficiary may disclaim succession to any interest in property that, unless disclaimed, would pass to the beneficiary by intestate succession or devise.

State 1 Statute 2 provides, in part, that unless a decedent has otherwise provided by will or other appropriate instrument with reference to the possibility of a disclaimer by the beneficiary, the interest disclaimed shall descend, be distributed, or otherwise be disposed of in the same manner as if the disclaimant had died immediately preceding the death or other event that cause the disclaimant's interest to become indefeasibly fixed both in quality and quantity. The disclaimer shall relate to that date for all purposes, whether recorded before or after the death or other event. An interest in property disclaimed shall never vest in the disclaimant.

State 1 Statute 3 provides that to be effective, a disclaimer shall be recorded at any time after the creation of the interest, but in any event within 9 months after the event giving rise to the right to disclaim, including the death of the decedent; or, if the disclaimant is not finally ascertained as a beneficiary or the disclaimant's interest has not become indefeasibly fixed both in quality and quantity at the death of the decedent, then the disclaimer shall be recorded not later than 6 months after the event that would cause the interest to become indefeasibly fixed both in quality and quantity. However, a

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disclaimer may be effective if recorded at any time after the creation of the interest, upon the written consent of all interested parties as provided in section 731.302 of the State 1 Probate Code. It has been represented that the only "interested party" is A, and that Taxpayer proposes to obtain A's consent pursuant to State 1 Statute 3.

Under State 1 law, as a result of the disclaimer, the Taxpayer will be treated as predeceasing Decedent with respect to the disclaimed interest.

In this case, based upon the representations made and the information submitted, the four requirements under section 2518(b) will be satisfied. The first requirement will be satisfied because the proposed disclaimer will be in writing. The second requirement will be satisfied because the proposed disclaimer will be delivered, within 9 months of the Taxpayer's twenty-first birthday, to A as is consistent with applicable State 1 law. The third requirement will be satisfied because Taxpayer has represented that he has not and will not accept any of the disclaimed interests or benefits. The fourth requirement is met because under State 1 law, the disclaimed property will pass to recipients other than the Taxpayer and will not pass to any recipient at the direction of the Taxpayer.

Accordingly, we conclude that assuming the disclaimer is valid under State 1 law, and provided that A consents to the recording of said disclaimer more than 9 months after the date of Decedent's death, the proposed disclaimer by Taxpayer of his interest in certain assets from Decedent's estate will be a qualified disclaimer under section 2518.

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.

Except as specifically ruled herein, we express or imply no opinion on the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter 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) provides that it may not be used or cited as precedent. In accordance with the power of attorney on file with the office, we are sending a copy of this letter to your authorized representative.

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

Enclosures  
Copy for section 6110 purposes  
Copy of this letter