

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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[Third Party Communication:
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Person To Contact: _____, ID No.

Telephone Number:

In Re: Ruling Request

Refer Reply To:
CC:PSI:B09
PLR-157453-05
Date: January 24, 2006

Legend:

- Decedent =
- Spouse =
- Court =

- State Law 1 =
- Date 1 =
- Date 2 =

Dear _____ :

This is in response to your letter dated November 6, 2005, requesting a ruling on whether a disclaimer is a qualified disclaimer for purposes of § 2518 of the Internal Revenue Code.

The facts submitted and the representations made are as follows. Decedent died on Date 1 survived by his spouse (Spouse) and two stepchildren. Article Fifth of Decedent's will provides that if Spouse predeceases Decedent, Decedent's residuary estate is to be distributed to his two stepchildren.

Decedent's residuary estate includes, among other assets, residential rental property (Property) owned by Decedent, two certificates of deposit (CDs) owned by Decedent, and four financial accounts (Financial Accounts) held as joint tenants with right of survivorship by Decedent and Spouse. It has been represented that Spouse did not contribute to the Property, the CDs, or the Financial Accounts during Decedent's lifetime, nor did she accept any benefits of the Property, the CDs, or the Financial Accounts after Decedent's death.

On Date 2 (within 9 months of Decedent's death), Spouse filed a disclaimer with Court, disclaiming any interest she had under Decedent's will in the Property and the CDs, and one-half of the Financial Accounts. Pursuant to the terms of the disclaimer and Article

Fifth of the will the CDs and the Property and one-half of the Financial Accounts will pass to the two stepchildren.

You are requesting a ruling that the disclaimer Spouse filed on Date 2 is a qualified disclaimer within the meaning of § 2518(b).

Law and Analysis:

Section 2046 provides that disclaimers of property interests passing upon death are treated as provided in § 2518.

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 9 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 2518(c)(1) provides that a disclaimer with respect to an undivided portion of an interest which meets the requirements of the preceding sentence shall be treated as a qualified disclaimer of such portion of the interest.

Section 25.2518-2(c)(4)(iii) provides that in the case of a transfer to a joint bank, brokerage, or other investment account (e.g. an account held at a mutual fund), if a transferor may unilaterally regain the transferor's own contributions to the account without the consent of the other cotenant, such that the transfer is not a completed gift under § 25.2511-1(h)(4), the transfer creating the survivor's interest in the decedent's share of the account occurs on the death of the deceased cotenant. Accordingly, if a surviving joint tenant desires to make a qualified disclaimer with respect to funds contributed by a deceased cotenant, the disclaimer must be made within 9 months of the cotenant's death. The surviving joint tenant may not disclaim any portion of the joint

account attributable to consideration furnished by the surviving joint tenant.

Under State Law 1, as a result of the disclaimer, Spouse will be treated as predeceasing Decedent with respect to the disclaimed interests.

In this case, it has been represented that Spouse did not contribute to any of the joint accounts being disclaimed and that Spouse has not accepted any benefit or interest in the property being disclaimed, including any income earned after Decedent's death that is attributable to the disclaimed property. Therefore, based upon the facts submitted and the representations made, we conclude, that if the disclaimer was valid under State law, the disclaimer was a qualified disclaimer under § 2518.

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 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,

Melissa C. Liquerman

Melissa C. Liquerman
Branch Chief, Branch 9
(Passthroughs & Special Industries)

Enclosure: Copy for § 6110 purposes.

cc: