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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
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Date:
July 30, 2008

In Re:

Legend:

Decedent	=
Spouse	=
IRA	=
Trust 2	=
Court	=
State Law	=
State	=
Year 1	=
Year 2	=
Year 3	=
Date 1	=
Date 2	=

Dear :

This is in response to your authorized representative's letter, dated January 22, 2008, and subsequent correspondence, requesting rulings under §§ 2518 and 2056 of the Internal Revenue Code.

The facts submitted and the representations made are as follows. In Year 1, Decedent and Spouse were married. Prior to her marriage to Spouse, Decedent opened an Individual Retirement Account (the IRA). On Date 1, in Year 1, Decedent and Spouse entered into a prenuptial agreement. Pursuant to paragraph 2(c)(ii) of the agreement, Decedent agreed to establish a trust (Trust 1) under the terms of her last will for the benefit of Spouse and to designate Trust 1 as the beneficiary of the IRA.

On Date 1, Decedent also executed her last will. Item IV of the will provides for the creation of Trust 1 and the designation of Trust 1 as the beneficiary of the IRA. Item IV further provides that Spouse is to receive all of the net income from Trust 1 in quarter annual installments for his lifetime. Upon Spouse's death, Trust 1 will terminate and the trust estate, which consists of the IRA, will be distributed to Trust 2, an intervivos trust Decedent created prior her marriage to Spouse. Article Fifth of Trust 2 provides that upon Decedent's death, the trust estate is to be distributed in equal shares to Decedent's four children (Children) as shall then be living, free of trust if the child has reached age 21, and to be held in trust if the child has not reached age 21.

In Year 2, when Decedent transferred the IRA to another custodial account, Decedent executed a new beneficiary designation form designating Children as beneficiaries of the IRA, with each child to be paid in equal shares. Decedent did not designate any contingent beneficiaries on the form. Article 8.06 of the IRA custodial agreement provides that if the beneficiaries listed on the beneficiary designation form predecease Decedent, Decedent's estate will be the beneficiary of the IRA. Decedent died on Date 2, in Year 3, survived by Spouse and Children.

Within nine months of Decedent's death, Children disclaimed their interests in the IRA in writing, delivered the disclaimers to the executors of Decedent's estate, and filed the disclaimers with Court. It has been represented that Children did not accept any of the income or other benefits of the disclaimed property prior to executing the disclaimers. As a result of these disclaimers, by operation of State Law, Article 8.06 of the IRA custodial agreement, and by specific bequest in Item IV of the will, the IRA passed to Trust 1. Upon Spouse's death, Trust 1 will terminate and the trust estate, which consists of the IRA, will be distributed to Trust 2 and then, pursuant to the terms of Trust 2, in equal shares to Children, either outright or in further trust, depending upon each child's age. Children did not disclaim their interests in Trust 2.

State Law provides in relevant part that the term "property" includes any interest in property and any power over or right with respect to the property. Any person to whom an interest in property is transferred or who succeeds to property by contract or by operation of law may renounce the property in whole or in part. A renunciation must be made by a written instrument that describes the renounced property, declares the renunciation, and the extent of it, and is signed by the person making the renunciation. The written instrument must be received by the transferor of the property, the transferor's legal representative, or other holder of title to the property not later than the date which is nine months after the later of the date of the transfer or the day on which the person making the renunciation reaches the age of 21. The instrument may also be filed in the probate court of the county in which proceedings concerning the transferor's estate are pending or in which they could be commenced. An instrument so filed in the probate court shall be conclusively presumed to have been received by the personal representative of the transferor's estate not later than the date of such filing, but earlier receipt may be shown. A renunciation causes the renounced property to pass as if the

person renouncing had predeceased the decedent. A renunciation relates back for all purposes to the date of the decedent's death.

The following rulings have been requested:

1. The disclaimers executed by Children are qualified disclaimers for purposes of § 2518;
2. Trust 1 qualifies as a qualified terminable interest property (QTIP) trust under § 2056(b)(7);
3. As a result of the disclaimers executed by Children, the IRA passing to Trust 1 will be treated as passing directly from Decedent to Spouse and, therefore, will qualify for the estate tax marital deduction under § 2056(b)(7).

Law and Analysis:

Section 2501(a)(1) provides that a tax, computed as provided in § 2502, is imposed for each calendar year on the transfer of property by gift during such calendar year by any individual, resident or nonresident.

Section 2511(a) provides that the tax imposed by § 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.

Section 2518 provides that, if a person makes a qualified disclaimer with respect to any interest in property, the disclaimed interest will be treated for gift, estate, and generation-skipping transfer tax purposes as if the interest had never been transferred to such person.

Section 2518(b) provides that a "qualified disclaimer" means an irrevocable and unqualified refusal by a person to accept an interest in property, but only if: (1) the disclaimer is in writing; (2) the disclaimer is received by the transferor of the interest, his 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 (A) the date on which the transfer creating the interest in the person is made, or (B) the day on which the person attains age 21; (3) the person has not accepted the interest or any of its benefits; and (4) as a result of the disclaimer, the interest passes without any direction on the part of the person making the disclaimer and passes either to the decedent's spouse or to a person other than the person making the disclaimer.

Under § 25.2518-2(e)(3) of the Gift Tax Regulations, if a disclaimer made by a person other than the surviving spouse is not effective to pass completely an interest in property to a person other than the disclaimant because (i) the disclaimant also has a right to receive such property as an heir at law, residuary beneficiary, or by other

means, and (ii) the disclaimant does not effectively disclaim these rights, the disclaimer is not a qualified disclaimer with respect to the portion of the disclaimed property which the disclaimant has a right to receive. Thus, for example, if a disclaimant who is not a surviving spouse receives a specific bequest of a fee simple interest in property and as a result of the disclaimer of the entire interest, the property passes to a trust in which the disclaimant has a remainder interest, then the disclaimer will not be a qualified disclaimer unless the remainder interest in the property is also disclaimed.

Under § 2046, provisions relating to the effect of a qualified disclaimer for purposes of chapter 11 are found in § 2518.

Section 2056(a) provides that for purposes of the tax imposed by § 2001, the value of the taxable estate, except as limited by § 2056(b), is determined by deducting from the value of the gross estate an amount equal to the value of any interest in property which passes or has passed from the decedent to the surviving spouse, but only to the extent that such interest is included in determining the value of the gross estate.

Section 2056(b)(1) provides that, where, on the lapse of time, on the occurrence of an event or contingency, or on the failure of an event or contingency to occur, an interest passing to the surviving spouse will terminate or fail, no deduction is allowed under § 2056(a) with respect to such interest.

Section 2056(b)(7)(A) provides that in the case of qualified terminable interest property for purposes of § 2056(a), such property shall be treated as passing to the surviving spouse, and for purposes of § 2056(b)(1)(A), no part of such property shall be treated as passing to any person other than the surviving spouse.

Section 2056(b)(7)(B)(i) provides that the term "qualified terminable interest property" means property which passes from the decedent, in which the surviving spouse has a qualifying income interest for life, and to which an election under this paragraph applies.

Decedent designated Children as the beneficiaries of the IRA on the IRA beneficiary designation form. Children executed written disclaimers within nine months of Decedent's death in which they disclaimed their interests in the IRA, delivered the disclaimers to the executors of Decedent's estate, and filed the disclaimers with Court. It has been represented that the disclaimers are valid under State Law. Under State Law, Children are deemed to have predeceased Decedent. Pursuant to Article 8.06 of the IRA custodial agreement, Decedent's estate is the beneficiary of the IRA. Further, pursuant to Item IV of Decedent's will, Trust 1 is the beneficiary of the IRA. Upon Spouse's death, Trust 1 will terminate and the trust estate, which consists of the IRA, will be distributed to Trust 2 and then pursuant to the terms of Trust 2, in equal shares to Children, either outright or in further trust. Children did not disclaim their interests in Trust 2 and, therefore, Children did not disclaim their entire interest in the IRA. Therefore, based upon the facts submitted and the representations made, we conclude

that Children's disclaimers are not qualified disclaimers for purposes of § 2518. See § 25.2518-2(e)(3).

In order for Trust 1 to qualify as a QTIP trust under § 2056(b)(7), the IRA must have passed from Decedent. In this case, for federal gift tax purposes, Children have made a taxable gift of the fair market value of the IRA and, accordingly, for federal estate tax purposes, the IRA passed from the Children, not Decedent. Therefore, based upon the facts submitted and the representations made, we conclude that Trust 1 does not qualify as a QTIP trust under § 2056(b)(7) and, accordingly, Decedent's estate is not entitled to a marital deduction for the trust estate of Trust 1 under § 2056(b)(7).

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) 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

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

Enclosures: Copy for § 6110 purposes