

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201001007**
Release Date: 1/8/2010
Index Number: 2511.18-00

Person To Contact:
 , ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B04 – PLR-119006-09
Date: September 14, 2009

Legend:

Donor =
Trust 1 =

Date 1 =
Date 2 =
Date 3 =
A =
B =
C =
D =
E =
F =
Taxpayer =
State =

State Statute 1 =

State Statute 2 =
State Statute 3 =
State Statute 4 =
State Statute 5 =

Dear :

This responds to your authorized representative's letter dated March 4, 2009, requesting a ruling on the gift tax consequences of proposed disclaimers to be executed by Taxpayer.

Facts

The facts submitted and representations made are as follows.

Trust 1

Trust 1, an irrevocable trust, was executed by Donor on Date 1, prior to January 1, 1977. Under Article Second, paragraph (b), of Trust 1, the trustees are to pay such sum or sums from time to time out of the income, accumulated income, or principal of Trust 1 to or for the benefit of A (Donor's child) or any of A's descendants, in the trustees' sole and absolute discretion in the event of illness, accident, other misfortune, or any emergency, or if, in the trustees' judgment, it is necessary to provide for the beneficiaries' comfortable maintenance, support, or education. Trust 1 will terminate twenty years after the death of the survivor of A, B, and C and all of Donor's descendants living on Date 1. On termination, the remaining Trust 1 principal and undistributed income will be distributed to the descendants of A who have no living ancestor who is a descendant of A, per stirpes.

On Date 1, the date Trust 1 was executed, Donor had eleven living descendants consisting of three children (A, B, and C) and eight grandchildren, all of whom are still living. D is a child of A and was living on Date 1. Taxpayer is D's child and A's grandchild. Under Article Second, paragraph (b), Taxpayer is one of the beneficiaries to whom the trustees may, in their discretion, make current distributions of income and principal, and Taxpayer has previously received such discretionary distributions from Trust 1. In addition, under Article Second, paragraph (b), Taxpayer will be entitled to receive a per stirpital portion of the Trust 1 remainder, if Taxpayer survives until the termination of Trust 1.

Taxpayer attained the age of majority (age 18) under State law on Date 3. Taxpayer proposes to disclaim his contingent right to receive any distribution from Trust 1 on termination of the trust. The disclaimer will be executed by Taxpayer within nine months after attaining majority. Taxpayer has not received any distributions from Trust 1.

Taxpayer requests a ruling that the proposed disclaimer will not constitute a transfer subject to federal gift tax.

Trust 2

Trust 2, an irrevocable trust, was executed by A on Date 2, prior to January 1, 1977. Under Paragraph First of Trust 2, the trust is to be held in three equal shares. Under Paragraph First, subparagraphs (a), (b) and (c), the income derived from one share is to be accumulated and added to principal. The income of the second one-third share is to be paid to A, and, on his death, to E, if she survives him as his spouse. The income of the remaining one-third share is to be paid to E so long as she is A's spouse or has survived A as his spouse, or to any of A's descendants in the event of need occasioned by illness, accident or other misfortune, or in any emergency, or if in the trustee's discretion it is necessary for the comfortable maintenance, support or education of any beneficiary or of his or her family.

Under Paragraph First, subparagraph (d), after A's death, or on E's later death if she survives A as his spouse, the three shares of Trust 2 are to be combined into a single trust (less any portion of the second one-third share for which A has made a contrary testamentary disposition of the income pursuant to the right A reserved to do so in Paragraph Third, subparagraph (d)) along with accumulated income). Trust 2 is then to be divided into equal shares, one such share for each of A's then living children and deceased children leaving surviving issue, the surviving issue to take the deceased child's share by representation. During the continuation of the trust term, the trustee is to pay to the beneficiaries of a respective share (a child of A, if living, or if a child dies, his or her surviving issue by representation) so much income of that share as the trustee in the trustee's discretion determines. In addition, under Paragraph First, subparagraph (e), after A's death, the trustee may distribute such principal as the trustee deems necessary to an income beneficiary in the event of illness, accident, other misfortune, or any emergency, or if, in the judgment of the trustee it is necessary for the comfortable maintenance, support or education of any beneficiary or of the beneficiary's family. Any amount paid is to be charged against the share from which the beneficiary is then receiving or entitled to receive income.

Under Paragraph First, subparagraph (d), Trust 2 is to terminate twenty years after the death of the last survivor of A, E, and those of A's children living on Date 2. On termination, the Trust 2 principal and accumulated income will be distributed, per stirpes, to A's descendants then living who have no living ancestor who is a descendant of A.

On Date 2, the date Trust 2 was executed, A had two living children, D and F. D is one of the measuring lives determining the duration of Trust 2. Taxpayer is D's child, and A's Grandchild. Accordingly, under Paragraph First(c), during A's lifetime, Taxpayer, as A's descendant, is entitled to distributions of income from a one-third share, described above, in the event certain needs arise. After the death of both A and D, if the trust continues and if Taxpayer is living, he will be entitled, as a surviving issue of D, to distributions of income and principal of the Trust 2 share set aside with respect

to D. Further, on termination of Trust 2, Taxpayer, if living, will be entitled to a distribution of all or a portion of the remainder of that share, by representation.

Taxpayer proposes to disclaim his contingent right to share in the distribution of Trust 2 on termination of the trust. The disclaimer will be executed by Taxpayer within nine months after attaining majority. Taxpayer has not received any distributions from Trust 2.

Taxpayer requests a ruling that the proposed disclaimer will not constitute a transfer subject to federal gift tax.

Law and Analysis:

Trust 1 and Trust 2 are governed by the laws of State. Under State Statute 1, any individual to whom property or an interest therein is donatively transferred by any means, including a transfer resulting from another disclaimer, may disclaim all or any portion of the transfer. Unless the terms of the transfer otherwise provide, the disclaimer shall cause the terms of the transfer to be applied to the disclaimed transfer and to any future interests taking effect thereafter as if the disclaimant had died immediately before the transfer.

State Statute 2 provides that a disclaimer is made by a writing showing an unconditional refusal to accept a transfer, or a portion thereof, signed by the disclaimant, or representative, and delivered on or before nine months after the transfer, or by any later time provided in the particular case or pursuant to other provisions of the State Statutes, and before any acceptance of the disclaimed interest. Delivery of a disclaimer may be accomplished by delivery to the transferor, the transferor's personal representative or other legal representative, or the holder of legal title to the property to which the interest is related.

State Statute 3 provides that each separate interest in property is subject to disclaimer or acceptance and each separate interest, including any specific amount, part, fraction or asset thereof, or formula amount based on present or future facts independent of the disclaimant's volition, is subject to disclaimer or acceptance.

State Statute 4 provides that a contingent future interest may be disclaimed in whole or in part at any time before, or within nine months after, beneficiaries of the interest have been fully ascertained and their interests vested.

Section 2501(a) of the Internal Revenue Code imposes a tax on the transfer of property by gift. Section 2511(a) provides that the gift tax imposed under § 2501 applies 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)(2) of the Gift Tax Regulations provides that, in the case of transfers creating an interest in the beneficiary disclaiming made before January 1, 1977, where the law governing the administration of the decedent's estate gives the beneficiary a right completely and unqualifiedly to refuse to accept ownership of property transferred from a decedent, a refusal to accept ownership does not constitute the making of a gift if the refusal: (1) is made within a reasonable time after knowledge of the existence of the transfer; (2) is unequivocal; (3) is effective under local law; and (4) is made before the disclaimant has accepted the property. Compare § 2518 and §§ 25.2518-1 through 25.2518-3, providing rules for determining whether a disclaimer is a qualified disclaimer effective for estate and gift tax purposes, in the case of the disclaimer of an interest in property that is created in the beneficiary disclaiming by a transfer made after December 31, 1976.

As noted above, under § 25.2511-1(c), if the interest to be disclaimed was created before January 1, 1977, the disclaimant must disclaim the interest in the property within a reasonable time after knowledge of the existence of the transfer creating the interest to be disclaimed. In the case of a disclaimer of an interest in trust, in general, the transfer occurs when the trust is established rather than when the interest actually vests in the disclaimant, if the transferor has not reserved any power over the trust. See Jewett v. Commissioner, 455 U.S. 305 (1982). However, the time limitation for making the disclaimer does not begin to run until the disclaimant has attained the age of majority and is no longer under a legal disability to disclaim. See Jewett v. Commissioner, supra, 455 U.S. at 318. See also, § 2518(b)(2)(B) and § 25.2518-2(c)(1)(ii).

In this case Taxpayer will execute each disclaimer within nine months after attaining the age of majority. Under these circumstances, the proposed disclaimers will be considered to be made within the time prescribed in § 25.2511-1(c).

Under § 25.2511-1(c)(2), the disclaimers must be unequivocal. Rev. Rul. 76-156, 1976-1 C.B. 292, which considers the application of § 25.2511-1(c), concludes that a disclaimer is unequivocal if the disclaimant's act of refusal is unambiguous in its consequences; that is, the disclaimant must unqualifiedly refuse to accept ownership of the property. For example, a disclaimer is unequivocal if the disclaimed property must pass as otherwise provided in the instrument, and not pursuant to the direction of the disclaimant. Similarly, a disclaimer is unequivocal if the disclaimant does not accept the benefits from the property interest disclaimed. In this case, the disclaimed interests will not pass pursuant to any direction on the part of Taxpayer. Further, Taxpayer will not accept the benefits of the disclaimed interests after the disclaimers. Cf. §§ 25.2518-3(a)(1)(i) and 25.2518-3(d), Examples (10) and (11), regarding treatment of certain interests in the same property as separate interests eligible for qualified disclaimer treatment under § 2518.

Under § 25.2511-1(c)(2), the disclaimers must be effective under local law. In this case, State law specifically provides that an individual may make a valid disclaimer of any separate interest in property while retaining other separate interests in the same property. Further, the disclaimers will be timely under State Statute 4. See also, State Statute 5. Consequently, if Taxpayer satisfies the procedural requirements prescribed under State law, the disclaimers will be valid under local law.

Finally, under § 25.2511-1(c)(2), the disclaimant must not have accepted the property before the disclaimer. In the instant case, distributions received by Taxpayer from Trust 1 prior to attaining the age of majority are not considered acceptance of the property subject to the disclaimer. Cf. § 25.2518-2(d)(3); § 25.2518-2(d)(4), Example 9, concluding that a minor's receipt of discretionary distributions during minority does not constitute acceptance of the benefits of the interest subsequently disclaimed under § 2518.

Accordingly, we conclude that, based on the representations made, assuming that the disclaimers are executed as proposed, the disclaimers with respect to Trust 1 and Trust 2 will not constitute transfers subject to the federal gift tax.

The ruling contained in this letter is 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 no opinion on the federal tax consequences of the proposed disclaimers under the cited provisions or under any other provisions of the Code.

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

Sincerely yours,

George Masnik
Chief, Branch 4
Office of Associate Chief Counsel
(Passthroughs and Special
Industries)

Enclosure

Copy for section 6110 purposes