Internal Revenue Service
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Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:P&SI:4- PLR-102481-99
Date: May 19, 1999

Re:

Legend:

Decedent	=
Taxpayer	=
Will	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
Brokerage Firm	=
Brokerage Account	=
State X	=
State X Law	=

This is in response to your letter dated December 17, 1998, and subsequent correspondence, in which you requested that we rule that a surviving spouse's proposed disclaimer will be a qualified disclaimer under § 2518 of the Internal Revenue Code.

The facts and representations are as follows: Decedent died testate on Date 1, a resident of State X. Under Article III, Paragraph 3.1 of her will, Decedent designated her surviving spouse (Taxpayer) as Sole Independent Executor of her will and estate.

Prior to Decedent's death, Decedent and Taxpayer signed an agreement with Brokerage Firm and opened a Brokerage Account with their community property funds. The specific terms of the agreement with the Brokerage Firm state, in pertinent part, as follows:

> We agree as between ourselves and with you that the initial funds and securities deposited into the account, all funds and securities deposited into the account in the future by either of us, and cash and stock dividends, interest income, and all other account increments are hereby partitioned so

> that such funds and values will hereafter be owned one-half by each of us respectively as our separate property.
>
> ... both of us, as between ourselves and with you, agree that the entire interest in the account, including the initial deposit, subsequent deposits, and subsequent cash and stock dividends, interest, interest income, and all other account increments are held by us as joint tenants with rights of survivorship and not as tenants-in-common and that the entire interest of a deceased joint tenant in the account will pass by right of survivorship. In the event of the death of either of us, the entire interest in the account shall be vested in the survivor on the same terms and conditions as theretofore held, without in any manner releasing the decedent's estate from any liability it may have hereunder.

On Date 2, Brokerage Firm, in accordance with the procedure which had been followed before Decedent's death, issued a check for the income earned on the account. Taxpayer deposited this check in the joint bank account of Decedent and Taxpayer. Taxpayer subsequently withdrew one-half of this amount and deposited it in the bank account for Decedent's estate which was opened on Date 4.

On Date 3, Taxpayer, upon the request of Brokerage Firm, authorized Brokerage Firm to transfer the assets in the Brokerage Account to an account held solely in Taxpayer's name.

On Date 4, Decedent's will was admitted for probate and Taxpayer was granted letters testamentary as executor of the estate. On the same date, Taxpayer, as executor, opened a bank account in the name of Decedent's estate. Taxpayer deposited one-half of the amount of all subsequent income checks issued by Brokerage Firm into this account. Also on Date 4, Taxpayer, as executor, requested Brokerage Firm to open a separate account in the name of Decedent's estate.

On Date 5, one-half of each security held in the original Brokerage Account was transferred to a separate account in the name of Decedent's estate.

Taxpayer proposes to disclaim Decedent's one-half interest in the Brokerage Account which passed to him by right of survivorship. The disclaimed interest will then pass pursuant to the terms of Decedent's will to the residuary beneficiaries.

Section 2046 of the Internal Revenue Code 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, the disclaimed interest will be treated for Federal estate, gift, and generation-skipping transfer tax purposes 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) 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 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) the person disclaiming the interest 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.

Under § 25.2518-1(b) of the Gift Tax Regulations, if a qualified disclaimer is made, the property is treated, for Federal gift, estate, and generation-skipping transfer tax purposes, as passing directly from the transferor, and not from the disclaimant, to the person entitled to receive the property as a result of the disclaimer. Thus, the disclaimant is not treated as making a gift.

Section 25.2518-2(c)(4)(iii) provides a special rule for joint bank, brokerage, and other investment accounts established between spouses or between persons other than husband and wife. It states that in the case of a transfer to a joint bank, brokerage, or other investment account, 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 that surviving joint tenant.

Section 25.2518-2(d)(1) states that a qualified disclaimer cannot be made with respect to an interest in property if the disclaimant has accepted the interest or any of its benefits, expressly or impliedly, prior to making the disclaimer. Acceptance is manifested by an affirmative act which 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 property. However, merely taking delivery of an instrument of 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 a decedent.

Section 25.2518-2(d)(2) states that if a beneficiary who disclaims an interest in property is also a fiduciary, actions taken by such person in the exercise of fiduciary powers to preserve or maintain the disclaimed property shall not be treated as an acceptance of such property or any of its benefits.

Under State X law, a joint account belongs, during the lifetime of all parties, to the parties in proportion to the net contributions by each to the sums on deposit, unless there is clear and convincing evidence of a different intent. In addition, sums remaining on deposit at the death of a party to a joint account belong to the surviving party or parties against the estate of the decedent if, by a written agreement signed by the party who dies, the interest of such deceased party is made to survive to the surviving party or parties.

In the instant case, Taxpayer proposes to file with the probate court, and deliver to himself, as executor, within 9 months of Decedent's death, a writing by which he will irrevocably disclaim his right to Decedent's one-half interest in the Brokerage Account. The proposed disclaimer thus will satisfy the requirements of §§ 2518(b)(1) and (2).

As a result of Taxpayer's disclaimer, the disclaimed assets will pass pursuant to Decedent's will to a residuary trust created under the will. Taxpayer is the sole income beneficiary of the residuary trust but will cease to have any interest in the trust upon the occurrence of certain events, including his

remarriage or death. Thus, the disclaimed interest will pass in accordance with the requirement of § 2518(b)(4).

We have considered whether two acts of the Taxpayer, either alone or together, constitute an "acceptance" of the disclaimed interest, or any of its benefits, within the meaning of § 2518(b)(3) and § 25.2518-2(d).

Under the standard procedures of the Brokerage Firm, upon the death of one joint tenant, assets held in joint accounts are transferred to accounts held solely by the surviving joint tenant. Although Taxpayer authorized the Brokerage Firm to transfer the assets in the joint account to an account held solely in his name, at no time after Decedent's death has Taxpayer drawn on any securities or funds from the account. In addition, Taxpayer has not otherwise asserted any control over the property. Under the facts and circumstances in this case, Taxpayer's authorization to transfer the joint account to an account held solely in his name is not considered acceptance of the Decedent's share of the joint account, or its benefits, for purposes of § 2518(b)(3).

Taxpayer received the first check for the income earned on the Brokerage Account approximately 10 days after Decedent's date of death. Taxpayer deposited this income distribution in the joint bank account of Decedent and Taxpayer. Taxpayer represents that he never used any of the funds which comprised Decedent's share of the joint bank account. Further, once Taxpayer was appointed executor of Decedent's estate, he created a bank account in the name of Decedent's estate and transferred Decedent's share of the joint bank account into this estate bank account. Under the facts and circumstances in this case, neither Taxpayer's receiving the income earned on the Brokerage Account nor depositing the first check that Taxpayer received after the Decedent's date of death into the joint bank account of Decedent and Taxpayer constitutes acceptance of Decedent's interest in the Brokerage Account, or any of its benefits, under § 2518(b)(3).

Based on the facts submitted and representations made, we conclude that the proposed disclaimer described above with respect to the Taxpayer's one-half survivorship interest in the jointly-held Brokerage Account, if made in writing within 9 months of Decedent's date of death, will be a qualified disclaimer for purposes of § 2518.

Except as specifically ruled herein, we express no opinion as to the consequences of this transaction under the cited provisions of the Code 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,

Assistant Chief Counsel
(Passthroughs and Special Industries)

By_____
Katherine A. Mellody
Senior Technician Reviewer
Branch 4

Enclosure
Copy for section 6110 purposes