

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:4-PLR-133476-02

Date:

SEPTEMBER 30, 2002

In Re: _____

Legend

Decedent =

Spouse =

Child 1 =

Child 2 =

Child 3 =

Child 4 =

Grandchild 1 =

Grandchild 2 =

Grandchild 3 =

Grandchild 4 =

Grandchild 5 =

Grandchild 6 =

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Grandchild 7 =

Grandchild 8 =

Date 1 =

Date 2 =

Date 3 =

State 1 =

State 2 =

State 3 =

State 4 =

Court 1 =

Court 2 =

Court 3 =

Cite 1 =

Cite 2 =

Cite 3 =

Cite 4 =

Cite 5 =

Dear _____ :

This responds to your letter dated June 17, 2002, and subsequent correspondence, requesting rulings regarding the application of § 2518 of the Internal Revenue Code to certain disclaimers of interests in Decedent's estate.

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FACTS

Decedent died testate on Date 1 in State 1. Decedent was survived by Spouse, Child 1, Child 2, Child 3 and Child 4. Child 1 has three children, Grandchild 1, Grandchild 2, and Grandchild 3, and they reside in State 1. Child 2 has three children, Grandchild 4, Grandchild 5 and Grandchild 6, and they reside in State 3. Child 3 has two children, Grandchild 7 and Grandchild 8, and they reside in State 2. Child 4 resides in State 4 and has no children. None of Decedent's children or grandchildren predeceased Decedent. All of Decedent's grandchildren are minors.

Article SECOND of Decedent's will bequeaths Decedent's personal and household effects to Spouse. Article THIRD provides for the creation of a separate trust to be funded with Decedent's unused generation-skipping transfer tax exemption.

Article FOURTH of Decedent's will provides as follows:

All the rest, residue and remainder of my estate, real, personal or otherwise and wheresoever situate, including any lapsed legacy or bequest, herein after called my residuary estate, shall be disposed of as follows:

(a) If my wife survives me, a separate FIVE PERCENT of my residuary estate shall be set aside for each child of mine who survives me and a separate FIVE PERCENT of my residuary estate shall be set aside for each child of mine who predeceases me but shall leaves [sic] descendants who survive me (said FIVE PERCENT so set aside for such descendants to be divided into shares, per stirpes, among them). The property or share so set aside shall be disposed of as provided in Article SIXTH of my Will.

(b) If my wife, [Spouse], survives me, the balance of my residuary estate (or my entire residuary estate, if I leave no descendants who survive me) shall be disposed of as follows:

(1) ONE-FIFTH thereof shall be distributed absolutely to my wife.

(2) FOUR-FIFTHS thereof shall be held by my Trustees in separate trust to pay the income therefrom in quarterly or more frequent installments to my wife during her life. I authorize and empower my Trustees from time to time to pay to my wife such sums out of the principal of her trust as they, in their absolute discretion, deem in her best interests, without being obliged to consider her other resources.

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Upon the death of my wife, the then principal of her trust shall be disposed of as follows:

(A) Absent a contrary provision in my wife's Will, there shall be paid therefrom all estate and inheritance taxes of whatever kind imposed by reason of the inclusion of the trust under this subdivision (b)(2) and of the trust under Article THIRD of this Will in my wife's estate for such tax purposes.

(B) The balance thereof shall be divided and disposed of as follows:

(i) ONE-HALF thereof shall pass to such one or more of my descendants, in such shares, equal or unequal, and subject to such lawful trusts, terms and conditions as my wife shall by Will appoint.

(ii) The balance thereof (and such part of the first one-half as my wife shall fail effectively to exercise her power of appointment with respect to) shall be disposed of as provided in subdivision (d) of this Article FOURTH.

(c) If my wife predeceases me, my residuary estate shall be disposed of as provided in subdivision (d) of this Article FOURTH.

(d) Upon my death or the death of my wife, as the case may be, the property above directed to be disposed of as provided in this subdivision (d) shall be divided into shares, per stirpes, for such of my children, [Child 4, Child 3, Child 1 and Child 2] as are then living and for the then living descendants of such of them as are then dead and each such share shall be disposed of as provided in Article SIXTH of this Will.

Article NINTH, paragraph (g) of Decedent's will provides:

(g) Any person may renounce, in whole or in part, any provision in his or her favor hereunder and, in such event, the property covered by said provision, to the extent renounced, shall be disposed of as though said person had predeceased me, and if said property is to be held in trust, to the extent renounced, said property shall become free of the trust for said person (and of any power of appointment said person may have with respect thereto) and shall be disposed of as though said person had predeceased me. I do not intend by the foregoing to suggest that any particular person should so renounce.

Several disclaimers are proposed. Each of Decedent's four children proposes to disclaim a fraction of the respective bequests to him or her of five percent of the Decedent's residuary estate under subdivision (a) of Article FOURTH of Decedent's will, the numerator of which is equal to five percent of the decedent's residuary estate

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less one-fourth of the "credit equivalent amount" and the denominator of which is equal to five percent of the decedent's residuary estate. In other words, each child proposes to disclaim all but approximately \$250,000 of the bequest to him or her under subdivision (a) of Article FOURTH.

Further, each grandchild, through his or her court appointed guardian, proposes to disclaim the property that otherwise would have passed to him or her under subdivision (a) of Article FOURTH as a result of his or her respective parent's disclaimer of that subdivision.

Spouse proposes to disclaim her entire interest in the portion of the property disclaimed by the Decedent's children and grandchildren under subdivision (a) of Article FOURTH that otherwise would pass into the residuary marital trust established for her benefit pursuant to paragraph (2) of subdivision (b) of Article FOURTH.

In addition, each of Decedent's children proposes to disclaim their respective remainder interests in the residuary marital trust under Article FOURTH subdivision (b) and their interests as residuary beneficiaries of the estate under Article FOURTH subdivisions (c) and (d), with respect to the disclaimed property. Each of Decedent's grandchildren, through their court appointed guardians, would then disclaim the property that would have passed to him or her under subdivisions (b), (c) and (d) of Article FOURTH as result of his or her respective parent's disclaimer under those subdivisions.

Finally, each of Decedent's children and grandchildren also proposes to disclaim all of his or her rights to inherit the aforementioned disclaimed property from the Decedent under the laws of intestate succession in State 1. Spouse will not disclaim her right to inherit from the Decedent under the laws of intestate succession in State 1.

On Date 2, Court 1 granted an order approving the above disclaimers on behalf of Grandchild 4, Grandchild 5 and Grandchild 6; on Date 2, Court 2 granted an order approving the above disclaimers on behalf of Grandchild 1, Grandchild 2 and Grandchild 3; and on Date 3, Court 3 granted an order approving the above disclaimers on behalf of Grandchild 7 and Grandchild 8.

It has been represented that all of the proposed disclaimers will be irrevocable, in writing, and delivered to the appropriate party within 9 months of Decedent's death. It has also been represented that none of the disclaimants will have accepted the disclaimed interests or any benefits therefrom.

You have requested the following rulings:

1. The disclaimer by the Decedent's children of (i) a fraction of the respective bequests to each of them of five percent of the Decedent's residuary estate under

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subdivision (a) of Article FOURTH, (ii) their respective interests in the disclaimed property that otherwise would have passed to the children under subdivisions (c) and (d) of Article FOURTH, (iii) their respective interests in the remainder of the residuary marital trust under paragraph (2) of subdivision (b) of Article FOURTH, and (iv) their respective rights to inherit such disclaimed property under the laws of intestate succession, constitute qualified disclaimers for purposes of § 2518.

2. The disclaimers by the Decedent's grandchildren of (i) their respective interests in Decedent's residuary estate under subdivision (a) of Article FOURTH, (ii) their respective interests in the disclaimed property that otherwise would have passed to the grandchildren under subdivisions (c) and (d), (iii) their respective interests in the remainder of the residuary marital trust under paragraph (2) of subdivision (b) of Article FOURTH, and (iv) their respective rights to inherit such disclaimed property under the laws of intestate succession, will constitute qualified disclaimers for purposes of § 2518.

3. The disclaimer by Spouse of her interest in property disclaimed under subdivision (a) of Article FOURTH that otherwise would have passed in the residuary marital trust for her benefit under paragraph (2) of subdivision (b) of Article FOURTH will constitute a qualified disclaimer for purposes of § 2518.

LAW AND ANALYSIS

Section 2518(a) provides that, if a person makes a qualified disclaimer with respect to any interest in property, Subtitle B (relating to the estate, gift and generation-skipping transfer taxes) shall apply with respect to such interest as if the interest had never been transferred to such person.

Section 2518(b) provides that the term "qualified disclaimer" means 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 related not later than the date which is 9 months after the later of --
 - (A) the date on which the transfer creating the interest in such person is made, or
 - (B) 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 --
 - (A) to the spouse of the decedent, or

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(B) to a person other than the person making the disclaimer.

Section 25.2518-1(b) of the Gift Tax Regulations provides that, 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.

Under sections 25.2518-2(e)(1) and (e)(2), in order to constitute a qualified disclaimer, the disclaimed interest must pass without any direction on the part of the person making the disclaimer to a person other than the disclaimant or in the case of a disclaimer made by a decedent's surviving spouse to that spouse. The requirements of a qualified disclaimer under section 2518 are not satisfied if the disclaimant, either alone or in conjunction with another, directs the redistribution or transfer of the property or interest in property to another person (or has the power to direct the redistribution or transfer of the property or interest in property to another person unless such power is limited by an ascertainable standard).

Section 25.2518-2(e)(2) provides that if as a result of a disclaimer made by an individual other than a surviving spouse, the property passes to the disclaimant as an heir at law, residuary beneficiary, or by other means, then in order to constitute a qualified disclaimer, the disclaimant must also disclaim the right to receive the property as an heir at law, residuary beneficiary, etc.

Under section 25.2518-3(a)(1), the disclaimer of all or an undivided portion of any separate interest in property may be a qualified disclaimer even if the disclaimant has another interest in the same property. In general, each interest in property that is separately created by the transferor is treated as a separate interest. For example, if an income interest in securities is bequeathed to A for life, then to B for life, with the remainder interest in such securities bequeathed to A's estate, and if the remaining requirements of § 2518(b) are met, A could make a qualified disclaimer of either the income interest or the remainder, or an undivided portion of either interest. A could not, however, make a qualified disclaimer of the income interest for a certain number of years. See also, § 25.2518-3(b) providing that a disclaimer of an "undivided portion" of a separate interest in property that meets the other requirements of § 2518(b) and the corresponding regulations is a qualified disclaimer. An undivided portion of a disclaimant's separate interest in property must consist of a fraction or percentage of each and every substantial interest or right owned by the disclaimant in such property. See § 25.2518-3(d), Example 2, describing the disclaimer of a fractional interest in a residuary estate.

Section 25.2518-3(a)(2) provides that a disclaimer is not a qualified disclaimer if the beneficiary disclaims income derived from specific property transferred in trust while continuing to accept income derived from the remaining properties in the same trust, unless the disclaimer results in such property being removed from the trust and

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passing, without any direction on the part of the disclaimant to persons other than the disclaimant, or to the spouse of the decedent.

Section 25.2518-3(c) provides that a disclaimer of a specific pecuniary amount out of a pecuniary or non-pecuniary bequest which satisfies the other requirements of § 2518(b) will be a qualified disclaimer provided no income or other benefit of the disclaimed amount inures to the benefit of the disclaimant either prior to or subsequent to the disclaimer. See § 25.2518-3(d), Example 18 and Example 19 regarding disclaimer of pecuniary amounts.

In § 25.2518-3(d), Example 8, under the terms of E's will, E's shares of stock in X, Y, and Z corporations are transferred to a trust. The trust instrument provides that all income is to be distributed currently to F and G in equal parts until F attains the age of 45 years. At that time the corpus of the trust is to be divided equally between F and G. F disclaims F's entire income interest in the trust while retaining the interest F has in corpus. The example concludes that the disclaimer is a qualified disclaimer.

Section 25.2518-3(d), Example 11, describes a situation where under the terms of a testamentary trust, W is to receive all trust income for life. The trustee has the power to invade trust corpus for the support and maintenance of D during the life of W. At W's death, the trust corpus is payable to D. D disclaims the right to receive distributions of trust corpus during W's lifetime, but retains the right to receive the remainder on W's death. The example concludes that D's disclaimer is a qualified disclaimer.

In order to satisfy the requirements of § 2518(b), a disclaimer must be valid under applicable local law. Estate of Dancy v. Commissioner, 872 F.2d 84 (4th Cir. 1989). That is, because state law determines whether a property interest passes from one to another, the disclaimer must constitute an effective renunciation under state law. Estate of Bennett v. Commissioner, 100 T.C. 67 (1993).

Under State 1 law, any person who is a devisee or beneficiary under a testamentary instrument, including a person succeeding to a disclaimed interest, or an heir may disclaim in whole or in part the right of succession to any property or interest therein, including a future interest. The disclaimer must be in writing, signed, and must describe the property or interest disclaimed. A disclaimer with respect to a present interest must be filed not later than 9 months after the death of the decedent; a disclaimer for a future interest must be filed not later than 9 months after the happening of the event that determines the taker's right to possession, use or enjoyment of the property or interest. Unless the decedent has otherwise provided, the property or interest disclaimed devolves: (a) as to a present interest, as if the disclaimant had predeceased the decedent, or, if the disclaimant is designated to take under a power of appointment exercised by a testamentary instrument, as if the disclaimant had predeceased the donee of the power; (b) as to a future interest, as if the disclaimant

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had died before the event determining that the taker of the property or interest is finally ascertained and the taker's interest is indefeasibly vested; and (c) a disclaimer relates back for all purposes to the date of the death of the decedent or the donee of the power. Cite 1.

Under State 1 law, a disclaimer on behalf of a minor may be made by the guardian of the minor. The disclaimer is not effective unless, prior thereto, the guardian has been authorized to disclaim by the court having jurisdiction of the minor after finding that it is advisable and will not materially prejudice the rights of the minor. Cite 2.

Under State 3 law, a disclaimer may be made for a minor by the guardian if the court having jurisdiction of the estate of the minor finds that the disclaimer (1) is in the best interests of those interested in the estate of the minor and of those who take the minor's interest by virtue of the disclaimer, and (2) is not detrimental to the best interests of the minor. Cite 3.

Under State 2 law, a disclaimer on behalf of a minor may be made by the guardian of the minor's estate if the court having jurisdiction of the estate authorizes the disclaimer after finding that it is advisable and will not materially prejudice the rights of the minor or the minors creditors. Cite 4

In the instant case, Decedent's children proposed to disclaim a fractional portion of the outright residuary bequest each receives under Article FOURTH, subdivision (a). Pursuant to Article NINTH Paragraph (g), the disclaimed interests will pass, in the case of Child 1, Child 2, and Child 3, to their respective issue, per stirpes. The issue of each respective child will each disclaim the property passing to them as a result of their respective parents' disclaimers. As a result of these disclaimers, and Child 4's disclaimer, pursuant to Article NINTH Paragraph (g), the disclaimed property will pass pursuant to Article FOURTH, subdivision (b)(1) and (2), one-fifth outright to Spouse, and four-fifths to the residuary marital trust established for Spouse's benefit. Spouse will disclaim her interest in the disclaimed assets passing to the residuary marital trust. As a result, under Article NINTH Paragraph (g), the disclaimed property will pass under Article FOURTH, subdivision (d), to Decedent's children. The children and grandchildren will each disclaim their respective interests as remainder beneficiaries of the residuary marital trust, and their interests as estate residuary beneficiaries under Article FOURTH, subdivisions (c) and (d), with respect to the disclaimed assets (including the right to receive such assets by intestacy). The disclaimed assets will pass outside of the residuary trust outright to Spouse under the State 1 intestacy statute. Cite 5. Under these circumstances, we conclude that, assuming the disclaimants do not accept any income from the disclaimed property as described in § 25.2518-3(d), Examples 18-20, the requirements on § 25.2518-2(e) and §§ 25.2518-3(a) and (b) discussed above will be satisfied.

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It is represented that the disclaimers will be irrevocable, in writing, delivered to the Executor of Decedent's estate not later than 9 months after Decedent's death, and that the disclaimants have not accepted any benefits from the disclaimed property. All of the disclaimers made on behalf of a minor grandchild have been approved by the court having jurisdiction over the minor grandchild. It is further represented that all of the disclaimers are valid under state law. Therefore, based on the facts and representations, we conclude as follows:

1. The disclaimer by the Decedent's children of (i) a fraction of the respective bequests to each of them of five percent of the Decedent's residuary estate under subdivision (a) of Article FOURTH, (ii) their respective interests in the disclaimed property that otherwise would have passed to them under subdivisions (c) and (d) of Article FOURTH, (iii) their respective interests in the remainder of the residuary marital trust under paragraph (2) of subdivision (b) of Article FOURTH, and (iv) their respective rights to inherit such disclaimed property under the laws of intestate succession, constitute qualified disclaimers for purposes of § 2518.

2. The disclaimers by the Decedent's grandchildren of (i) their respective interests in Decedent's residuary estate under subdivision (a) of Article FOURTH, (ii) their respective interests in the disclaimed property that otherwise would have passed to them under subdivisions (c) and (d), (iii) their respective interests in the remainder of the residuary marital trust under paragraph (2) of subdivision (b) of Article FOURTH, and (iv) their respective rights to inherit such disclaimed property under the laws of intestate succession, will constitute qualified disclaimers for purposes of § 2518.

3. The disclaimer by Spouse of her interest in property disclaimed under subdivision (a) of Article FOURTH that otherwise would have passed to the residuary marital trust for her benefit under paragraph (2) of subdivision (b) of Article FOURTH will constitute a qualified disclaimer for purposes of § 2518.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under the cited provisions or any other provisions of the Code. 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.

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

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Pursuant to a power of attorney on file with this office, a copy of this ruling is being sent to your authorized representatives.

Sincerely,

Associate Chief Counsel
(Passthroughs and Special
Industries)

By _____
George L. Masnik
Chief, Branch 4