

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B09-PLR-121016-01

Date:

October 5, 2001

In Re:

LEGEND:

Taxpayer =

Date 1 =

Father =

Trust 1 =

Trust 2 =

Mother =

Date 2 =

Date 3 =

Age =

Date 4 =

State =

Date 5 =

Dear :

This letter is in response to your letter dated April 2, 2001, requesting a ruling that Taxpayer's disclaimer of her remainder interest in Trust 2 within nine months after learning of her interest in Trust 2 will be made within a reasonable time and will not constitute a taxable gift under § 2501 of the Internal Revenue Code.

The information submitted and representations made are summarized as follows: On Date 1, Father executed a will. Paragraph 4 of Father's will created two trusts, Trust 1 and Trust 2.

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Paragraph 5 of Father's will provides that the trustees shall pay over to Mother during her life the net income from Trust 1 in quarterly or more frequent installments as convenient.

Paragraph 6 of Father's will provides that until Mother's remarriage the trustees shall accumulate and reinvest the net income from Trust 2 and pay to Mother from current net income and any accumulated and undistributed net income such amounts as in addition to the net income from Trust 1 are necessary to support her in her customary mode of life.

Paragraph 7 of Father's will provides that until Mother's remarriage the trustees shall pay to Mother from time to time out of the principal of Trust 1 such amounts, if any, as in addition to the payments to her under paragraphs 5 and 6 shall be necessary to support her in her customary mode of life, and after her remarriage to pay to Mother from time to time out of the principal of Trust 1 such amounts, if any, as in addition to the payments to her under paragraph 5 shall be necessary to maintain her in reasonable comfort or to prevent her from suffering want or hardship.

Paragraph 8 of Father's will provides that after Mother's remarriage the trustees shall pay to Mother from time to time out of the principal or any undistributed income of Trust 2 such amounts, if any, as in addition to the payments to her under paragraphs 5 and 7 shall be necessary to maintain her in reasonable comfort or to prevent her from suffering want or hardship.

Paragraph 9 of Father's will provides that during the life of Mother and until Date 2, whichever is later, the trustees shall accumulate and reinvest all the net income from Trust 2 not paid out to Mother as above provided, and in their discretion accumulate and pay such net income, current and accumulated, to Father's children, and to apply it for their support, maintenance and education in such proportions and such amounts and at such times as the trustees shall consider to be indicated by the respective needs of the children and by the benefits which they can be expected to derive, and if at any time or times during the continuance of the trust the income and other resources of any child shall in the judgment of the trustees, because of illness, economic conditions or other contingencies, be insufficient properly to maintain that child in his customary mode of life, the trustees are hereby authorized and empowered in their discretion to pay to that child, or to use and apply for his benefit, so much of the principal of the trust estate as the trustees deem appropriate.

Paragraph 10 of Father's will provides that on the death of Mother the trustees shall hold, dispose of and distribute all principal and undistributed income of Trust 1 for or among one or more of Father's descendants then surviving, and if none survive then for or among one or more of Father's sisters and brother and their descendants then surviving, in such amounts and proportions, and for such estates and interests, and upon such terms, trusts, conditions and limitations as Mother shall appoint by a will,

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which will specifically refers to this power hereby given her. If or to the extent that Mother does not exercise her power to appoint by will, the then remaining principal and undistributed income of Trust 1 shall be added to and become a part of the principal of Trust 2.

Paragraph 11 of Father's will provides that on the death of Mother or on Date 2, whichever is later, all principal and undistributed income of Trust 2 shall be divided into equal shares, one for each child of Father who then survives or who is then deceased but has left lineal descendants who survive, one share to be distributed to each surviving child, and all the other shares, if any, to be distributed to the said surviving lineal descendants or any deceased child or children, per capita and not per stirpes, and if none of Father's children or other descendants survive the principal and income of Trust 2 shall be distributed in equal shares per stirpes among the group composed of Father's brothers and sisters and their lineal descendants then surviving.

Father died on Date 3. Taxpayer was Age on the date of Father's death. Mother died on Date 4. Taxpayer first learned of her interests in Trust 2 shortly after Mother's death when she read Mother's will which exercised a limited testamentary power of appointment over the remainder of Trust 1 in favor of Taxpayer's children. This led Taxpayer to locate a copy of Father's will. An advisor reviewed Father's will and informed Taxpayer that she was the remainder beneficiary of Trust 2. Taxpayer represents that prior to receiving this information, Taxpayer had no knowledge of any interests granted to her under either trust. Taxpayer proposes to disclaim her interest in Trust 2 by Date 5, which is nine months after Date 4.

Taxpayer represents that she has neither received nor accepted any income or principal of Trust 2 nor taken any action precluding a disclaimer under State law. Taxpayer wishes to disclaim her remainder interest in Trust 2 under the laws of State. The law of State gives a beneficiary the right to disclaim in whole or in part the right of succession to any property or interest therein by delivering or filing a written disclaimer. The law of State further provides,

If the property or interest has devolved to the disclaimant under a testamentary instrument or by the laws of intestacy, the disclaimer shall be filed, if of a present interest, not later than nine months after the death of the deceased owner or deceased donee of a power of appointment and, if of a future interest, not later than nine months after the event determining that the taker of the property or interest is finally ascertained and his or her interest is indefeasibly vested. If the disclaimant does not have actual knowledge of the existence of the interest, such disclaimer shall be filed not later than nine months after the disclaimant has actual knowledge of the existence of the interest.

LAW AND ANALYSIS:

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Section 2501(a)(1) imposes a tax for each calendar year on the transfer of property by gift during such taxable year by any individual, resident or nonresident.

Section 2511 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 25.2511-1(c)(2) of the Gift Tax Regulations provides, in part, that in the case of taxable transfers creating an interest in the person disclaiming made before January 1, 1977, where the law governing the administration of the decedent's estate gives a beneficiary, heir, or next-of-kin 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 is made within a reasonable time after knowledge of the existence of the transfer. The refusal must be unequivocal and effective under the local law.

The Supreme Court has recognized that, under the regulation, an interest must be disclaimed within a reasonable time after the disclaimant obtains knowledge of the transfer creating the interest to be disclaimed, rather than a reasonable time after the distribution or vesting of the interest. Jewett v. Commissioner, 455 U.S. 305 (1982).

Based on the facts presented and representations made, and provided the disclaimer is made by Date 5, we conclude Taxpayer's disclaimer will be made within a reasonable time after she learned of her interest in Trust 2 under § 25.2511-1(c)(2). Therefore, provided the disclaimer is valid and effective under the governing local law and if the other requirements of § 25.2511-1(c)(2) are satisfied, we conclude that Taxpayer's disclaimer will not constitute a taxable gift under section 2501.

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. If there is a change in material fact or law (local or federal) before the transactions considered in this ruling take effect, the ruling will have no force or effect. 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 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) of the Code provides that it may not be used or cited as precedent.

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Pursuant to the Power of Attorney on file with this office, a copy of this letter is being sent to Taxpayer.

Sincerely yours,
Frances Schafer
Counsel to the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure:

Copy for section 6110 purposes