

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- 137690-03
Date:

Re:

OCTOBER 24, 2003

Legend:

Taxpayer =
Decedent =
Son 1 =
Son 2 =
Grandson 1 =
Grandson 2 =
Grandson 3 =
LLC =
Date 1 =
Date 2 =
X =
State Statute 1 =
State Statute 2 =
State Statute 3 =
State Statute 4 =
State =

Dear :

This is in response to your letter dated October 23, 2003, and other correspondence in which you request a ruling that the proposed disclaimer will be a qualified disclaimer under § 2518 of the Internal Revenue Code, and that the property disclaimed will be treated as passing directly from Decedent's estate to Decedent's heirs at law (other than Taxpayer) as a result of the disclaimer.

The facts and representations submitted are summarized as follows. Decedent, a resident of State, died intestate on Date 1 survived by her mother, Taxpayer, and Decedent's brothers, Son 1 and Son 2. One of Decedent's siblings predeceased her,

PLR-137690-03

survived by three children, Grandson 1, Grandson 2 and Grandson 3. Prior to her death, Decedent had been adjudicated incompetent, and Taxpayer and Son 1 were appointed as her co-guardians. Taxpayer and Son 1 have also been appointed as co-personal representatives of Decedent's estate. Under the laws of intestate succession of State, (State Statute 1), Decedent's entire estate will pass to Taxpayer.

One of the assets included in the Decedent's estate is an X% interest in LLC, a State limited liability company. There have been no distributions from the LLC since the date of Decedent's death. Taxpayer proposes to disclaim the interest in the LLC passing to her under State intestacy laws. As a result of the disclaimer Taxpayer will be treated as predeceasing Decedent with respect to the disclaimed property and under State Statute 1, the disclaimed LLC interest will pass to Son 1, Son 2 and Grandsons 1, 2 and 3.

Taxpayer is currently co-manager of the LLC. The other members of the LLC have engaged in discussions as to how the company can be most effectively managed. Taxpayer was not a party to these discussions. The other members of the LLC have proposed amending the LLC agreement to designate Son 1 as the sole manager of the LLC. Further, the agreement will be amended to provide that certain actions that previously required an affirmative vote of members holding more than 50% of the outstanding units, will now require an affirmative vote of members holding at least 67% of the outstanding units. These actions include, inter alia, amending the agreement and removal of the manager. All current members of the LLC and all those who will become beneficial owners of units in the LLC as a result of the disclaimer will execute the amendment.

Since Taxpayer is also a manager of the LLC and the co-personal representative of Decedent's estate, her acquiescence to the amendment is necessary. After disclaiming her interest, Taxpayer will execute the amendment as co-personal representative of Decedent's estate. Taxpayer will then resign as co-manager of LLC. It is represented that the amendment is consistent with the LLC operating agreement and would have been put into place at the inception of the LLC, except that the probate court having jurisdiction over Decedent's guardianship required a simple majority vote.

Taxpayer will disclaim her LLC interest prior to Date 2, which is within 9 months of Decedent's death. Other than the interests she acquired as Decedent's intestate heir, Taxpayer does not own any interest in LLC. Further, prior to her death, Decedent, through her guardianship, was the only LLC member that held more than 50% of the membership units. After Taxpayer's disclaimer, no person will hold more than 50% of the membership units.

State Statute 2 provides, generally, that "disclaimer" means a written instrument which declines, refuses, releases, renounces or disclaims an interest which would otherwise be succeeded to by a beneficiary, which instrument defines the nature and extent of the interest disclaimed thereby and which must be signed, witnessed and acknowledged by the disclaimant in the manner provided for deeds of real estate.

PLR-137690-03

The term "beneficiary" includes a person entitled to take an interest by intestate succession.

State Statute 3 further provides that a disclaimer shall be filed at any time after the creation of the interests, but in all events within 9 months after the death of the person by whom the interest was created or from whom it would have been received. State Statute 4 provides that unless the person by whom the interest was created or from whom it would have been received has otherwise provided by will or other appropriate instrument with reference to the possibility of a disclaimer by the beneficiary, the interest disclaimed shall descend, be distributed or otherwise be disposed of in the same manner as if the disclaimant had died immediately preceding the death or other event which caused him to become finally ascertained as a beneficiary. An interest of any nature in or to the estate of an intestate may be declined, refused or disclaimed without ever vesting in the disclaimant.

Section 2046 of the Internal Revenue Code provides that, for estate tax purposes 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 of an interest in property, the estate, gift, and generation-skipping transfer tax provisions will apply to that interest as if it had never been transferred to such person.

Under § 2518(b), the term "qualified disclaimer" means an irrevocable and unqualified refusal by a person to accept an interest in property, provided: (1) the disclaimer is in writing; (2) the disclaimer is received by the transferor of the interest, his legal representative, or the holder of legal title to the property, not later than the date which is 9 months after the later of the date on which the transfer creating the interest is made or the date on which the person refusing the interest 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 the disclaimer, the interest passes without any direction by 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.

Under § 25.2518-2(c)(1), the written disclaimer must be delivered no later than the date which is 9 months after the date on which the transfer creating the interest in the disclaimant is made.

Under § 25.2518-2(d)(1), 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. Under § 25.2518-2(d)(2), 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 (e.g., directing the harvesting of a crop, or maintenance of a home) is not treated as an acceptance of such property. However, the fiduciary's disclaimer of a

PLR-137690-03

beneficial interest is not a qualified disclaimer if the fiduciary exercised a discretionary power to allocate enjoyment of the interest among members of a class.

Under § 25.2518-2(e)(1), a disclaimer is not a qualified disclaimer unless the disclaimed interest passes without any direction on the part of the disclaimant to a person other than the disclaimant, unless the disclaimant is the spouse of a decedent. If there is an express or implied agreement that the disclaimed interest is to be given to a person specified by the disclaimant, the disclaimant will be treated as directing the transfer of the property interest.

In the present case, Taxpayer proposes to disclaim the entire interest in LLC passing to her under State intestacy laws. Taxpayer's execution of the amendment to the agreement, as described above, in her capacity as co-personal representative of Decedent's estate, will not be considered the acceptance of benefits of the disclaimed interest. Accordingly, assuming the other requirements of § 2518 are satisfied, we conclude that the proposed disclaimer will be a qualified disclaimer under § 2518 and the property will be treated as passing directly from Decedent according to the laws of intestacy of State.

Except as specifically ruled herein, we express no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code.

In accordance with the power of attorney on file with this office, we are sending a copy of this letter to your authorized representative.

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

Enclosure
Copy for section 6110 purposes