

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:09-PLR-133905-02

Date:

August 27, 2002

Re:

Legend

Taxpayer =

Donor =

Daughter =

State =

Date =

Dear :

This is in response to your April 18, 2002, letter in which you requested a ruling on the federal gift tax consequences of a proposed disclaimer.

In 1955, Donor executed an irrevocable trust (Trust). Under the terms of Trust, the trustees are currently authorized:

to pay to or for the benefit of [Daughter], or any of her descendants, in the sole and absolute discretion of the Trustees, in the event of illness, accident, or other misfortune, or in the event of any emergency, or if in the judgment of the Trustees, it is necessary for the comfortable maintenance, support or education of any such person, such sum or sums from time to time out of the income or accumulated income or principal of the trust estate as the Trustees, in their sole judgment shall deem necessary.

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Trust further provides that it will terminate 20 years after the death of the survivor of Donor's children and all descendants of Donor living at the time Donor executed Trust. On termination, the trust corpus will be distributed among the then living descendants of Daughter, per stirpes. At the time Donor created Trust, Donor had three living children and eight grandchildren. All of these individuals are still living.

Taxpayer is the great grandchild of Donor and a current beneficiary of Trust to whom the trustees may, in their discretion, make distributions. Taxpayer has previously received discretionary distributions from Trust. Taxpayer does not intend to disclaim her right to such discretionary distributions. In addition, Taxpayer is a potential distributee of the trust corpus on termination of Trust. Taxpayer's right to share in the terminating distribution of Trust is dependent upon her surviving until the date of the termination of Trust. Taxpayer, who will reach the age of majority under State law on Date, proposes to disclaim her right to receive any distributions from Trust on the termination of Trust. The disclaimer will be executed by Taxpayer within nine months after attaining her majority.

Section 469.010 of State Revised Statutes provides that 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.

Section 469.020 of State Revised Statutes 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 chapter 469 of State Revised 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.

Section 469.050 of State Revised Statutes 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.

Section 469.070 of State Revised Statutes 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. A vested interest subject to defeasance or divestment is deemed a contingent interest for this purpose.

Section 2501(a)(1) of the Internal Revenue Code imposes a tax on all transfers of property by gift. Section 2511(a) provides that the federal 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 taxable transfers creating an interest in the beneficiary disclaiming made before January 1, 1977, where

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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 §§ 25.2518-1 through 25.2518-3, which apply to a qualified 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 the 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, 455 U.S. at 318. In the present case, Taxpayer proposes to execute the disclaimer within nine months after reaching age 18. Under these circumstances, the proposed disclaimer will be considered to be made within the time prescribed in § 25.2511-1(c).

Under § 25.2511-1(c), the disclaimer 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. In this case, the disclaimed interest will not pass pursuant to any direction on the part of Taxpayer. Similarly, the disclaimer is unequivocal if the disclaimant does not accept the benefits from the property interest disclaimed. In this case, Taxpayer has received discretionary distributions from Trust and is not disclaiming her right to continue to receive such distributions, in the trustees' discretion, during the term of Trust. She is disclaiming her separate, future interest (contingent upon her survival) in the distributions from Trust at its termination and represents that she will not accept any terminating distributions after the disclaimer. Compare §§ 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), the disclaimer 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 disclaimer will be timely under § 469.070 of the State Revised Statutes. Consequently, if Taxpayer satisfies the procedural requirements prescribed under State law, the disclaimer will be valid under local law.

Finally, under § 25.2511-1(c), the disclaimant must not have accepted the property. As noted above, Taxpayer represents that she will not accept or receive any of the terminating distributions of Trust. Compare § 25.2518-2(d)(3), Example (9) regarding treatment of discretionary distributions of income and corpus to minor children under § 2518.

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Accordingly, we conclude that, based on the facts submitted and representations made, if the disclaimer is executed as proposed, the disclaimer will not constitute a transfer 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 transaction under the cited provisions or under any other provisions of the Code.

The ruling contained in this letter is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

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

Sincerely yours,

Associate Chief Counsel
(Passthroughs and Special
Industries)

Katherine A. Mellody

By: Katherine A. Mellody
Senior Technician Reviewer
Branch 4

Enclosure

Copy for section 6110 purposes