Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
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Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:PSI:4
PLR-137125-10
Date: MARCH 10, 2011

Decedent =
Taxpayer =
Spouse =
Daughter =
Brokerage Firm 1 =
Brokerage Firm 2 =
Bank Account 1 =
Bank Account 2 =
A =
Date 1 =
Date 2 =
Date 3 =
Date 4 =
Date 5 =
Date 6 =
Date 7 =
Date 8 =
Date 9 =
Court =
State Statute =

Dear :

This letter responds to your letter dated September 5, 2010, requesting a ruling concerning the application of § 2518 of the Internal Revenue Code to a disclaimer.

Facts

The facts and representations submitted are summarized as follows. On Date 1, Decedent died testate survived by his wife, Spouse, and three children. At death, Decedent held several investments, including investments through a traditional Individual Retirement Account (IRA) and two § 403(b) retirement accounts at Brokerage Firm 1, as well as investments through a § 403(b) retirement account at Brokerage Firm 2 (collectively, Retirement Accounts). The beneficiary designation forms for the Retirement Accounts listed Spouse as the primary beneficiary. If Spouse survived Decedent and disclaimed her interests in Retirement Accounts, the trustee of the trust created under Article IV of Decedent's will was designated as the contingent beneficiary.

Under Article III of Decedent's will, if Spouse survived Decedent, any Retirement Accounts that name the trustee as beneficiary are to fund a disclaimer trust established under Article IV. However, if Spouse does not survive Decedent, then any Retirement Accounts are to pass outright, equally to Decedent's living issue, per stirpes. Under the terms of the disclaimer trust, the trustee must distribute all income to Spouse during her lifetime and also may make discretionary distributions of principal to her. Spouse also has the right to withdraw up to A percent of the principal each year.

As of his date of death, Decedent was receiving required minimum distributions (RMDs) from Retirement Accounts. The RMDs from Brokerage Firm 1 were made with respect to each investment. Both Brokerage Firm 1 and Brokerage Firm 2 distributed the RMDs quarterly by automatic deposit into Bank Account 1, which was held jointly in the names of Decedent and Spouse with rights of survivorship.

Spouse died on Date 3. On Dates 2 and 5, Brokerage Firm 2 automatically deposited RMDs into Bank Account 1. On Date 4, Brokerage Firm 1 automatically deposited an RMD into Bank Account 1.

On Date 6, Court appointed Daughter as Administratrix of Spouse's estate. Accordingly, on Date 7, Daughter closed Bank Account 1 and, on the following day, opened Bank Account 2 for Spouse's estate, transferring the entire balance of Bank Account 1 into Bank Account 2.

On Date 8, Daughter, as Administratrix, petitioned Court for authorization to renounce Spouse's entire interest in the IRA and one of the § 403(b) accounts, as well as her entire interest attributable to one investment in the other § 403(b) account at Brokerage Firm 1. She also requested authorization to disclaim Spouse's entire interest in the § 403(b) account at Brokerage Firm 2, as well as Spouse's interest in the disclaimer trust established under Article IV of Decedent's will. On Date 9, Court

granted Daughter's petition, and Daughter notified, in writing, Brokerage Firms 1 and 2 and the Decedent's estate that Spouse was disclaiming these interests. Under State Statute, the disclaimant is treated as having predeceased the decedent.

Taxpayer represents that the proceeds from the RMDs remained in Bank Account 1 and, subsequently, Bank Account 2, from the date of distribution to the date of the disclaimer. Taxpayer further represents that Spouse's estate will accept a distribution from Brokerage Firms 1 and 2 representing the income attributable to the RMDs earned between the Decedent's date of death and the date of the disclaimer. Taxpayer also represents that no other amounts have been distributed to Spouse or her estate from Retirement Accounts.

Taxpayer has requested a ruling that the automatic deposits of RMDs into Bank Account 1 and the transfer of the entire balance of Bank Account 1 into Bank Account 2 do not constitute an acceptance of any portion of the Decedent's Retirement Accounts within the meaning of § 2518(b)(3) and § 25.2518-2(d) of the Gift Tax Regulations.

Law and Discussion

Section 2046 provides that disclaimers of interests passing upon death are treated for federal estate tax purposes as provided by § 2518. Section 2518 sets forth the requirements that must be met for a disclaimer to be treated as a qualified disclaimer for federal gift tax purposes.

Section 2518(a) provides that if a person makes a qualified disclaimer with respect to any interest in property, then for purposes of the federal estate, gift and generation-skipping transfer tax, such interest will be treated 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) 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 relates not later than the date that is 9 months after the later of the date on which the transfer creating the interest in such person is made, or the day that the 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 to the spouse of the decedent, or to a person other than the person making the disclaimer.

Section 25.2518-1(b) provides, in part, that if a person makes a qualified disclaimer, then for purposes of the Federal estate, gift, and generation-skipping transfer tax provisions, the disclaimed interest in property is treated as if it had never been transferred to the person making the qualified disclaimer. Instead, it is considered as passing directly from the transferor of the property to the person entitled to receive the property as a result of the disclaimer. Accordingly, a person making a qualified disclaimer is not treated as making a gift.

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

Section 25.2518-2(e)(1) provides that a disclaimer is not a qualified disclaimer unless the disclaimed interest passes without direction on the part of the disclaimant to a person other than the disclaimant (except if the disclaimant is the decedent's surviving spouse). If there is an express or implied agreement that the disclaimed interest in property is to be given or bequeathed to a person specified by the disclaimant, the disclaimant is to be treated as directing the transfer of the property interest. A disclaimer is not a qualified disclaimer 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 the disclaimed property passes to or for the benefit of the disclaimant as a result of the disclaimer (except in the case of a disclaimer by the surviving spouse). See Treas. Reg. § 25.2518-2(e)(2).

Section 25.2518-3 provides rules regarding the circumstances under which an individual may make a qualified disclaimer of less than the individual's entire interest in property and may accept the remaining interest of the property. Section 25.2518-3(a) generally provides that each interest in property that is separately created by the transferor is treated as a separate interest in property. Section 25.2518-3(b) provides that a disclaimer of an undivided portion of a separate interest in property that meets the other requirements of a qualified disclaimer under § 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 the property and must extend over the entire term of the disclaimant's interest in the property and in other property into which the property is converted.

Section 25.2518-3(c) provides that a disclaimer of a specific pecuniary amount out of a pecuniary or nonpecuniary bequest or gift which satisfies the other requirements of a qualified disclaimer under § 2518(b) and the corresponding regulations is a qualified disclaimer provided that no income or other benefit of the disclaimed amount inures to the benefit of the disclaimant either prior to or subsequent to the disclaimer. Thus, following the disclaimer of a specific pecuniary amount from a bequest or gift, the amount disclaimed and any income attributable to that amount must be segregated from the portion of the gift or bequest that was not disclaimed. Such a segregation of assets making up the disclaimer of a pecuniary amount must be made on the basis of the fair market value of the assets on the date of the disclaimer or on a basis that is fairly representative of the value changes that may have occurred between the date of transfer and the date of the disclaimer. The regulation further provides that a pecuniary amount that is distributed to the disclaimant from the bequest or gift prior to the disclaimer is treated as a distribution of corpus from the bequest or gift. However, the acceptance of a distribution from the bequest or gift is considered an acceptance of a proportionate amount of the income earned by the bequest or gift. The regulation provides a formula to determine the proportionate share of the income considered to be accepted by the disclaimant at the time of the disclaimer, as follows:

$$\frac{\text{Total amount of the distributions received by the disclaimant out of the bequest or gift}}{\text{Total value of the bequest or gift on the date of transfer}} \times \text{Total amount of income earned by the bequest or gift between the date of transfer and the date of disclaimer}$$

Rev. Rul. 2005-36, 2005-1 C.B. 1368, provides that a beneficiary's receipt of RMDs from an IRA constitutes acceptance of that portion of the corpus of such account, plus the income attributable to that amount. The beneficiary's acceptance, however, of these amounts does not preclude the beneficiary from making a qualified disclaimer with respect to all or a portion of the balance of the IRA.

Although the RMDs were automatically deposited into Bank Account 1 and such amounts remained in Bank Accounts 1 and 2 from the date of distribution until the date of the disclaimer, Spouse is deemed to have accepted the RMDs under §§ 2518(b)(3) and 25.2518-2(d). Rev. Rul. 2005-36 provides that a beneficiary's receipt of an RMD constitutes acceptance of both the RMD and the income attributable to that amount. The amount of income attributable to the RMDs for each account is calculated by dividing the total amount of RMDs Spouse received from that account by the total value of that account on Decedent's date of death and multiplying the result by the total amount of income earned in that account between the Decedent's date of death and the date of the disclaimer. Accordingly, Spouse did not make a qualified disclaimer of the RMDs or of the income attributable to that amount under § 2518. However, Spouse may make a qualified disclaimer of the balance of the Retirement Accounts if the requirements of § 2518 have been met.

Daughter received a court order granting her petition to disclaim Spouse's interests in Retirement Accounts and the disclaimer trust established under Article IV of Decedent's will. Daughter, as Administratrix, then disclaimed those interests in writing and now represents that Spouse did not receive any additional distributions from Retirement Accounts. Based on the facts submitted and the representations made, we conclude that Spouse's disclaimer of the balance of Retirement Accounts satisfies the requirements for making a qualified disclaimer under § 2518.

Except as expressly provided 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.

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.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

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.

Sincerely,

____

Leslie H. Finlow
Senior Technician Reviewer, Branch 4
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures: Copy for § 6110 purposes
Two copies of this letter