

**Internal Revenue Service**

Department of the Treasury

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Person to Contact:  
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Refer Reply To:  
CC:DOM:P&SI:4/PLR 109077-99  
Date:  
**September 10, 1999**

Re :

Legend

Decedent	=
Spouse	=
Child A	=
Child B	=
Child C	=
Child D	=
Date 1	=
Date 2	=
Trustee	=

This is in response to your letter dated April 29, 1999, in which you requested several ruling concerning the application of §§ 2518 and 2056 of the Internal Revenue Code.

Decedent died on Date 1, survived by Spouse who was designated as personal representative of the estate. Under the terms of Decedents will, executed on Date 2, Decedent's residuary estate is to be held in trust. Under the terms of the trust, the trustee is to pay all the trust income to Spouse, at least quarterly, for life. The trustee may distribute corpus to Spouse and, "if advisable", to Decedent's descendants, in such amounts as the trustee deems advisable to provide for "proper help, support and maintenance", including expenses incurred by reason of illness or disability. Upon the death of Spouse, the trust will terminate and the corpus is to be distributed outright, per stirpes to Child A, Child B, Child C, and Child D.

Decedent's personal representative proposes to file a petition in the appropriate local court, to sever (retroactive to date of death) the trust into a Marital Trust and a Family Trust. See FSA § 737.403 (West 1998). The terms of each trust will be identical to the current trust terms. The Decedent's living descendants who have reached the age of majority will execute and deliver irrevocable written disclaimers renouncing their right to

receive discretionary corpus distributions from the Marital Trust during Spouse's life. The personal representative will petition the local court to appoint a guardian ad litem on behalf of those descendants that have not reached the age of majority and unborn descendants. It is represented that the Decedent's descendants have not accepted or received any discretionary distributions or any other benefit from the residuary estate. Trustee will serve as trustee of the Marital Trust.

You have requested the following rulings:

1. The disclaimers to be made by or on behalf of the Decedent's descendants with respect to their interests as current discretionary principal beneficiaries of the Marital Trust will be qualified disclaimers under § 2518.
2. The Decedent's personal representative may elect to treat the Marital Trust and the property distributed or allocated to it as qualified terminable interest property under § 2056(b)(7).

Section 2046 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 with respect to any interest in property, the Federal 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) such refusal is in writing; (2) the disclaimer is received by the transferor of the interest, his legal representative, or the holder of the legal title to the property to which the interest relates not later than the date which is 9 months after the later of the date on which the transfer creating the interest in such person is made, or the day on which such person 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 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.

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(e), in general, 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.

Under § 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. 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.

Section 2056(a) provides that the value of a decedent's taxable estate shall be determined by deducting from the value of the gross estate an amount equal to the value of any interest in property that passes or has passed from the decedent to the surviving spouse, but only to the extent that such interest is included in determining the value of the gross estate.

Section 2056(b)(1) provides the general rule that no deduction shall be allowed for an interest passing to the surviving spouse if, on the lapse of time, on the occurrence of an event or contingency, or on the failure of an event or contingency to occur, the interest passing to the surviving spouse will terminate or fail.

Section 2056(b)(7) provides an exception to the terminable interest rule in the case of qualified terminable interest property.

Section 2056(b)(7)(A) provides that qualified terminable interest property shall be treated as passing to the surviving spouse and no part of such property shall be treated as passing to any person other than the surviving spouse. Thus, the value of such property is deductible from the value of the gross estate under § 2056(a).

Section 2056(b)(7)(B)(i) defines the term "qualified terminable interest property" as property: (1) which passes from

the decedent, (2) in which the surviving spouse has a qualifying income interest for life, and (3) to which an election under § 2056(b)(7)(B)(v) applies.

Section 2056(b)(7)(B)(ii) and the regulations thereunder provide that the surviving spouse will be considered to have a qualifying income interest for life if: (1) the surviving spouse is entitled to all the income from the property, payable annually or at more frequent intervals, and (2) no person, including the surviving spouse, has a power to appoint any part of the property to any person other than the surviving spouse during the surviving spouse's lifetime.

Section 2056(b)(7)(B)(v) provides that an election under § 2056(b)(7) with respect to any property is to be made by the executor on the return of tax imposed by § 2001. The election, once made, is irrevocable.

Section 20.2056(b)-7(b)(4)(i) of the Estate Tax Regulations provides that the election referred to in § 2056(b)(7)(B)(v) is made on the return of tax imposed by § 2001. For purposes of § 20.2056(b)-7(b)(4)(i), the term "return of tax imposed by § 2001" means the last estate tax return filed by the executor on or before the due date of the return, including extensions or, if a timely return is not filed, the first estate tax return filed by the executor after the due date.

Under § 2044, any property in which the decedent possessed a qualifying income interest for life and for which a deduction was allowed under § 2056(b)(7) is includible in the decedent's gross estate.

In the present case, we conclude that if the proposed disclaimers are delivered within 9 months of the Decedent's death, then the requirements of § 2518 will be satisfied and each disclaimer will constitute a qualified disclaimer under s 2518. Furthermore, we also conclude that, as a result of the disclaimers, as proposed, the Marital Trust will satisfy the requirements of § 2056(b)(7) and the personal representative may elect to treat the property passing to the Marital Trust as qualified terminable interest property.

Except as ruled above, we express or imply no opinion concerning the federal tax consequences of this transaction under the cited provisions of the Code or any other provision of the Code.

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

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

Sincerely,

Assistant Chief Counsel  
(Passthroughs and Special  
Industries)

By \_\_\_\_\_  
Geroge L. Masnik  
Chief, Branch 4

Enclosure  
Copy for 6110 purposes