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Internal Revenue Service
Index No.: 2518.00-00,
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Department of the Treasury

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Ben Franklin Station
Washington, DC 20044

Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:P&SI:4 - PLR-109334-99
Date: October 13, 1999

Re:

LEGEND:

Decedent =

Daughter =

Grandson =

County =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Company =

Bank Fund =

Trust =

This is in response to your letter dated May 7, 1999, requesting a ruling concerning the validity and effect of a disclaimer that is intended to qualify under section 2518 of the Internal Revenue Code, on the Generation-Skipping Transfer (GST) tax applicable with respect to Decedent.

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The facts and representations submitted are summarized as follows: Decedent died on Date 1, a resident of County, State. Decedent executed her will on Date 2, and amended her will by a codicil that was executed on Date 3. Decedent was survived by Daughter and Daughter's son, Grandson.

Decedent's will provides for certain specific charitable bequests in Articles SECOND and THIRD of the will.

Article FOURTH provides that, if Grandson survives Decedent by thirty days, one-half of Decedent's shares of Company, a publicly traded corporation, held at her death and the proceeds of Bank Fund would pass to a trust (Trust) for the use and benefit of Grandson. In the event Grandson does not survive Decedent for thirty days, Article FOURTH provides that the bequest would lapse.

Article FOURTH further provides that the Trustees, during the period of the Trust, are authorized to pay to or for the benefit of Grandson all of the income and so much of the principal as the Trustees deem advisable for Grandson's health, maintenance, support and complete education, including preparatory, college, and post-graduate or professional training.

Article FOURTH also provides that, when Grandson reaches age twenty-five, the trustees are to distribute one-third of the trust principal to him. When Grandson reaches age thirty, the trustees are to distribute one-half of the trust principal and, when he reaches age thirty-five, the balance of the principal and any accumulated income is to be distributed to him.

Article FIFTH provides that all the rest, residue and remainder of Decedent's state is given, devised and bequeathed to Daughter, or her issue, per stirpes.

Article SIXTH appoints Daughter as executrix of the will and as the trustee of Trust.

Grandson has survived Decedent for more than thirty days. It is represented that, on Date 4, Grandson executed a disclaimer. The amount disclaimed is expressed in terms of a formula that is the amount of trust property (valued at the Decedent's date of death) of Trust that is in excess of the Decedent's available GST exemption, together with the income and increase, if any, attributable to the property. The disclaimed property (and any income attributable to the disclaimed amount) will be segregated from the portion of the Trust that is not disclaimed. The disclaimed portion of the Trust will pass without direction on the part of Grandson, pursuant to the terms of the Trust and State law, to the residuary estate for the benefit of Daughter.

Under 20 Pa. C.S.A. §2514(10), in the absence of a contrary intent in a will, if a bequest that is not part of the residuary estate fails because the beneficiary fails to survive the testator or disclaims, and the bequest does not otherwise pass to issue of the beneficiary, if not otherwise expressly provided by law, then the bequest will be included in a residuary devise or bequest.

It is also represented that, on Date 5, the disclaimer was sent to Daughter in her capacity as executrix of Decedent's estate and trustee of Trust and that Daughter received the disclaimer within 9 months of Decedent's death. It is further represented the disclaimer will be effective under State law.

At death, Decedent owned 61,958 shares of Company stock and the Bank Fund account had been closed.

It is represented that Grandson, the disclaimant, has not accepted or received any interest or benefits from the Trust. It is also represented that, at the time of Decedent's death, Decedent's available GST exemption under section 2631 was $1,000,000.

The following rulings are requested:

1. The disclaimer by Grandson of a portion of Grandson's interest in Trust under Decedent's will is a qualified disclaimer within the meaning of section 2518.

2. The interest disclaimed by Grandson will be treated as passing directly from the Decedent to a nonskip person so that no generation-skipping transfer tax liability will result from the transfer of the disclaimed interest.

3. Grandson's disclaimer of a portion of Grandson's interest in Trust will result in Trust being funded in an amount not to exceed the remaining GST tax exemption available to Decedent. Trust will have an inclusion ratio of zero and will not incur GST tax, provided the executrix properly allocates Decedent's remaining GST exemption.

Ruling #1.

Under section 2046(a) of the Internal Revenue Code, provisions relating to the effect of a qualified disclaimer for estate tax purposes are found in section 2518.

Section 2518(a) provides that, if a person makes a qualified disclaimer with respect to any interest in property, the disclaimed interest will be treated for gift, estate, and generation-skipping transfer tax purposes as if the interest had never been transferred to such person.

Section 2518(b) provides that a "qualified disclaimer" means an irrevocable and unqualified refusal by a person to accept an interest in property, but only if:

1) the disclaimer is in writing,

2) the disclaimer is received by the transferor of the interest or his legal representative no later than 9 months after the date on which the transfer creating the interest in the person making the disclaimer is made, or the date on which the person making the disclaimer attains age 21,

3) the person making the disclaimer has not received the interest or any of it benefits, and

4) as a result of the disclaimer, the interest passes without any direction on the part of the person making the disclaimer to the decedent's spouse or to a person other than the person making the disclaimer.

Section 25.2518-3(a)(1)(i) of the Gift Tax Regulations provides that a disclaimer of all or an undivided portion of a separate interest in property may be a qualified disclaimer even if the disclaimant has another interest in the same property.

Section 25.2518-3(a)(1)(ii) provides that a disclaimant shall be treated as making a qualified disclaimer of a separate interest in property if the disclaimer relates to severable property and the disclaimant makes a disclaimer that would be a qualified disclaimer if such property were the only property in which the disclaimant had an interest. Severable property is property that can be divided into separate parts each of which, after severance, maintains a complete and independent existence. For example, a legatee of shares of corporate stock may accept some shares of the stock and make a qualified disclaimer of the remaining shares.

Section 25.2518-3(a)(2) provides that a disclaimer is not a qualified disclaimer under section 2518 if the beneficiary disclaims income derived from specific property transferred in trust while continuing to accept income derived from the remaining properties in the same trust unless the disclaimer results in such property being removed from the trust and passing, without any direction on the part of the disclaimant, to persons other than the disclaimant or to the spouse of the decedent. A disclaimer of both an income interest and a remainder interest in specific trust assets is not a qualified disclaimer if the beneficiary retains interests in other trust property unless, as a result of the disclaimer, such assets are removed from the trust and pass, without any direction on the part of the disclaimant, to persons other than the disclaimant or to the spouse of the decedent.

Section 25.2518-3(c) provides that a disclaimer of a specific pecuniary amount out of a pecuniary or nonpecuniary bequest or gift that satisfies the other requirements of a qualified disclaimer under section 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 such 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 value changes that may have occurred between the date of the transfer and the date of the disclaimer.

In section 25.2518-3(d), Example (6), E died on September 13, 1978. Under the provisions of E's will, E's shares of stock in X, Y, and Z corporations were to be transferred to a trust. The trust provides that all income is to be distributed currently to F and G in equal parts until F attains the age of 45 years. At that time, the corpus of the trust is to be divided equally between F and G. F disclaimed both the income interest and the remainder interest in the shares of X stock. F's disclaimer results in the X stock being transferred out of the trust to G without any direction on F's part. F's disclaimer is a qualified disclaimer under section 2518(b).

In the present case, Grandson executed a disclaimer of a pecuniary amount of the value of the Trust property. The disclaimer is described in terms of a formula that is expressed as that amount of trust property (valued at the Decedent's date of death) of Trust that is in excess of the Decedent's available GST exemption, together with the income and increase, if any, attributable to the property. The disclaimed property (and any

income attributable to the disclaimed amount) will be segregated from the portion of the Trust that is not disclaimed. The disclaimed portion of the Trust will pass without direction on the part of Grandson, pursuant to the terms of the Trust and State law, to the residuary estate for the benefit of Daughter.

It is represented that Grandson has not accepted any income or other benefit of the disclaimed amount prior to executing the disclaimer and will not accept any income or benefit of the disclaimed amount subsequent to the disclaimer.

We conclude that, if the other requirements of section 2518(b) are satisfied, Grandson's disclaimer of a pecuniary amount of Trust property described as the amount in excess of Decedent's available GST exemption, together with the income and increase, if any, attributable to the disclaimed amount is a qualified disclaimer.

Rulings #2 and #3.

Section 2601 provides that a tax is imposed on every generation-skipping transfer. Section 2611 defines the term "generation-skipping transfer" to mean (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2612(c)(1) defines the term "direct skip" to mean a transfer subject to a tax imposed under the estate and gift tax sections of the Code of an interest in property to a skip person.

Section 2613(a)(1) defines the term "skip person" as including a natural person assigned to a generation that is 2 or more generations below the generation assignment of the transferor.

Section 2631(a) provides that, for purposes of determining the inclusion ratio, every individual is allowed a GST tax exemption of $1,000,000 (adjusted for inflation under section 2631(c)) that may be allocated by the individual (or the individual's executor) to any property with respect to which the individual is the transferor. An allocation, once made, is irrevocable.

Section 2642 provides the inclusion ratio is the excess (if any) of 1 over the applicable fraction for a trust. The numerator of the fraction is the generation-skipping transfer tax exemption allocated to the trust; the denominator is the value of property transferred to the trust reduced by federal estate tax or state death tax actually recovered from the trust attributable to the property and any allowable charitable deduction.

Section 2654(c) states that, for provisions relating to the effect of a qualified disclaimer for purposes of chapter 13 (the GST tax), see section 2518.

In the present case, the interest disclaimed by Grandson will be treated as passing, pursuant to the terms of the will and state law, directly from the Decedent to the residue of the estate that is bequeathed to Daughter. Daughter, the daughter of the transferor (Decedent), is a non-skip person, and therefore, the transfer of the amount disclaimed will not be subject to the GST tax.

Grandson's disclaimer of a portion of his interest in Trust pursuant to a formula equal to the amount of Trust property that is in excess of Decedent's available GST tax exemption will result in Trust being funded in an amount not to exceed the remaining GST tax exemption available to Decedent. Trust, therefore, will have an inclusion ratio of zero and will not incur GST tax, provided the executrix properly allocates Decedent's remaining GST exemption to Trust.

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.

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.

Sincerely yours,

Assistant Chief Counsel
(Passthroughs and Special Industries)

By James F. Hogan
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