

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

Telephone Number:

Refer Reply To:
CC:PSI:B04
PLR-119576-11
Date:
November 01, 2011

Re:

Legend:

Decedent =

Spouse =

Adult Child =

Grandchild =

Estate =

Corporate Trustee =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Decedent's Trust =

GRAT =

State =

State Statute =

Asset 1 =

Asset 2 =

Asset 3 =

Asset 4 =

Asset 5 =

Asset 6 =

Asset 7 =

Asset 8 =

Asset 9 =

Asset 10 =

Dear :

This responds to your authorized representative's letter of April 28, 2011, and other correspondence, requesting rulings with respect to the gift and generation-skipping transfer tax consequences of disclaimers of interests in property.

The facts submitted and representations made are as follows. Decedent died on Date 1, in 2010. She was survived by Spouse, Adult Child, and Adult Child's minor child (Grandchild). Currently, Adult Child and Grandchild are Decedent's only issue.

Generally, Decedent's will provides that Spouse is to receive the GRAT annuity. Decedent's Trust is to receive Decedent's remaining probate property, including Asset 1. Decedent held Asset 2 and Asset 3 in joint tenancy with Spouse. It is represented that Decedent provided some of the consideration to acquire the jointly-held property.

Upon disclaimers, Decedent's Trust property distributable to GST Trust and Grandchild Trust

On Date 2, Decedent executed a revocable trust (Decedent's Trust) and transferred Assets 4, 5, and 6 to the trust. The trust became irrevocable when Decedent died. Under Article 4.1 of Decedent's Trust, the trust is to be divided into three trusts at Decedent's death. Spouse is to receive the income of the three trusts during his life. In addition, he is to receive principal as necessary or advisable for his proper support, maintenance, and health.

If Spouse does not survive Decedent, Decedent's Trust property is to be distributed as follows. First, under Article 5.1(01), an amount equal to Decedent's available GST exemption is to be distributed to a trust (GST Trust) for the benefit of Decedent's issue. Under Article 5.2(01), trust income and principal are distributable to the issue as considered advisable. Under Articles 5.2(02) and 9.13, the GST Trust will terminate when all of Decedent's issue have died, at which time fifty percent of the GST Trust property will be distributed to Decedent's heirs at law and fifty percent of the property will be distributed to Spouse's heirs at law. Spouse, Adult Child, and Corporate Trustee are designated as the trustees of the GST Trust.

The balance of the Decedent's Trust property is to be distributed outright to Adult Child. If Adult Child does not survive Decedent, the balance of the Decedent's Trust property is to be held in trust for Adult Child's issue (Grandchild Trust). Income and principal of the Grandchild Trust are payable to the issue as necessary or advisable for their support, maintenance, health and education. On attaining age 25, a beneficiary may request distribution of his or her respective portion of the trust property by right of representation. If a beneficiary dies before age 25, the pro rata portion is payable to his or her estate. Spouse and Adult Child are the trustees of the Grandchild Trust.

Article 7.4 applies to the GST Trust and Grandchild Trust. Under Article 7.4, a trust must terminate no later than 21 years after the death of the survivor of the individual beneficiaries named in the trust who were living on Date 2. On such a termination, the trust property is to be distributed outright to the persons and in the proportions determined as though that trust had terminated immediately prior to that time.

Grantor Retained Annuity Trust

Decedent executed a grantor retained annuity trust (GRAT) on Date 3 and transferred Assets 7 and 8 to it. The GRAT term was five years during which an annuity amount was payable to Decedent or Estate. Decedent died before the GRAT term expired.

Under Articles VI.A. and VI.B. of the GRAT, the GRAT property (GRAT Property) is distributable at Decedent's death pursuant to her exercise of a testamentary general power of appointment. If Decedent fails to exercise her general power of appointment, the GRAT Property is distributable to Spouse. If Spouse does not survive Decedent, the GRAT Property is distributable to Adult Child. If Adult Child does not survive Decedent, the GRAT Property is held in a trust (Successor Trust) for Adult Child's issue until the youngest reaches age 30. It is represented that Decedent did not exercise her testamentary power and the GRAT property passed under the alternative provisions of the trust.

Under Article VI.B., income or principal as necessary or advisable may be expended for a beneficiary's support, maintenance, health, education and best interests. When a beneficiary attains age 30, his or her proportionate share of the Successor Trust property will be distributed outright to him or her. If a beneficiary dies before reaching age 30, he or she is to have a testamentary general power of appointment with respect to the pro rata portion. Under Article XII.A., the trust must end no later than twenty-one years after the death of the last to die of Spouse, Adult Child, Adult Child's spouse, and Grandchild. Spouse is designated as the trustee of the Successor Trust. Adult Child is designated as the successor trustee.

Spouse's and Adult Child's Disclaimers

On Date 4, within nine months of Decedent's date of death, Spouse disclaimed in writing property rights and interests passing to him by reason of Decedent's death. Spouse disclaimed probate property and that portion of jointly-held property for which Decedent provided the consideration. Spouse's disclaimer was delivered to Estate's executor and the trustees of the respective trusts not later than nine months after

Decedent's death, which was the transfer creating the interests disclaimed. Spouse disclaimed all rights and interests in the three trusts created for him in Decedent's Trust, including all rights and powers to (i) allocate property between trusts, (ii) participate in decisions concerning the distribution of income or principal of the GST Trust, and (iii) participate in the nomination or appointment of any additional, alternate, or successor trustee of the GST Trust. Spouse likewise disclaimed all rights to receive the GRAT Property, including all rights and powers to (i) participate in decisions concerning the distribution of income or principal of the trust, and (ii) participate in the nomination or appointment of any additional, alternate, or successor trustee of the trust. Finally, under State law, the disclaimed property will pass to and for the benefit of Grandchild and Adult Child's other issue, if any, and will not pass at the direction of Spouse.

Also on Date 4, Adult Child disclaimed all rights in writing to Decedent's probate property and to property Decedent owned in her own name. Adult Child's disclaimer was delivered to Estate's executor and the trustees of the respective trusts not later than nine months after Decedent's death. Further, Adult Child disclaimed all rights created for her under Decedent's Trust, *i.e.*, rights to the distributions from the GST Trust and to an outright distribution of the balance of Decedent's Trust. However, Adult Child's disclaimer did not apply to Asset 6, Asset 7, Asset 9, and Asset 10. Adult Child likewise disclaimed all rights to the GRAT Property, *i.e.*, rights to receive the property outright. Finally, under State law, the disclaimed property will pass to and for the benefit of Grandchild and Adult Child's other issue, if any, and will not pass at the direction of Adult Child.

Under State Statute, a beneficiary may disclaim any interest in property. The disclaimer takes effect as of the time the instrument creating the interest becomes irrevocable, and the disclaimed interest passes as if the disclaimant died immediately before the interest was created.

Effect of the Disclaimers

As the result of the disclaimers, Spouse and Adult Child are deemed under State law to have predeceased Decedent. An amount of Decedent's Trust property equal in value to Decedent's available GST exemption is distributable, as of the date of Decedent's death, to the GST Trust. Income and principal are distributable, as the Corporate Trustee considers advisable, to Grandchild and Adult Child's other issue, if any, for the duration of the trust term.

The balance of Decedent's Trust property is distributable, as of the date of Decedent's death, to the Grandchild Trust for the benefit of Grandchild and Adult Child's other issue, if any. A beneficiary of the Grandchild Trust will receive income and principal for support, maintenance, health and education until attaining age 25 when he or she will receive his or her pro rata portion of trust property outright. Spouse and Adult Child are the trustees of the trust, but Adult Child cannot participate in distribution

decisions.

The GRAT Property is distributable, as of the date of Decedent's death, to the Successor Trust for the benefit of Grandchild and Adult Child's other issue, if any. A beneficiary will receive trust income or principal for support, maintenance, health, education and best interests until he or she attains age 30, when he or she will receive a pro rata portion of the trust property outright. Spouse is the trustee and Adult Child is to succeed him, but neither may participate in distribution decisions.

You have requested the following rulings:

1. Estate may elect to have the estate tax not apply and to have the basis rules of § 1022 apply.
2. Spouse's disclaimers made with respect to the probate property, jointly-held property, Decedent's Trust, and GRAT are qualified disclaimers for purposes of § 2518.
3. Adult Child's disclaimers made with respect to the probate property, Decedent's Trust and GRAT are qualified disclaimers for purposes of § 2518.
4. The Decedent's Trust assets passing to the GST Trust will have an inclusion ratio of zero and be exempt from GST Tax.
5. The balance of Decedent's Trust passing to Grandchild's Trust and the GRAT assets passing to the Successor Trust will be direct skips subject to GST tax, but will be taxed at a rate of zero percent.

Ruling 1:

Section 1014(a) of the Internal Revenue Code (Code) provides, in part, that except as otherwise provided in § 1014, the basis of property in the hands of a person acquiring the property from a decedent shall be the fair market value of the property at the date of the decedent's death.

Section 1022(a), enacted in Subtitle A of Title V of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), provides, in part, that

- (1) property acquired from a decedent dying after December 31, 2009, shall be treated for purposes of the respective subtitle as transferred by gift and
- (2) the basis of the person acquiring property from such a decedent shall be the lesser of the adjusted basis of the decedent, or the fair market value of the property at the date of the decedent's death.

Section 2001(a) imposes a tax on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

Section 2010(c)(3)(A) provides that the basic exclusion amount is \$5,000,000.

Section 2210(a), enacted in Subtitle A of Title V of EGTRRA, provides that chapter 11 (the estate tax) shall not apply to estates of decedents dying after December 31, 2009.

Section 301(a) of the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 (TRUIRJCA), effective for estates of decedents dying, and transfers made, after December 31, 2009, provides that each provision of law amended by subtitle A of Title V of EGTRRA is amended to read as such provision would read if such subtitle had never been enacted.

Section 301(c) of TRUIRJCA provides, in part, that, notwithstanding section 301(a), in the case of an estate of a decedent dying after December 31, 2009, and before January 1, 2011, the executor may elect to apply the Code as though the amendments made by subsection (a) do not apply with respect to chapter 11 of the Code and with respect to property acquired or passing from such decedent (within the meaning of § 1014(b) of such Code).

In this case, Decedent died after December 31, 2009, and before January 1, 2011. Consequently, the executor may elect not to have the estate tax apply to the Estate, but to have the provisions of § 1022 apply for purposes of determining basis. See Rev. Proc. 2011-41, 2011-35 I.R.B. 188, for optional safe harbor guidance.

Rulings 2 and 3:

Section 2501 imposes a tax on the transfer of property by gift by an individual.

Section 2511 provides that the tax imposed by § 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 2518(a) provides that if a person makes a qualified disclaimer with respect to any interest in property, then for purposes of the estate, gift, and generation-skipping transfer taxes, the 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 which is nine 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) 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) of the Gift Tax Regulations provides, in part, that if a person makes a qualified disclaimer, then, for purposes of 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(c)(4)(iii) provides, in part, that, in the case of a transfer to a joint bank, brokerage, or other investment account (e.g., an account held at a mutual fund), if a transferor may unilaterally regain the transferor's own contributions to the account without the consent of the other cotenant, such that the transfer is not a completed gift under § 25.2511-1(h)(4), the transfer creating the survivor's interest in the decedent's share of the account occurs on the death of the deceased cotenant. Accordingly, if a surviving joint tenant desires to make a qualified disclaimer with respect to funds contributed by a deceased cotenant, the disclaimer must be made within nine months of the cotenant's death. The surviving joint tenant may not disclaim any portion of the joint account attributable to consideration furnished by that surviving joint tenant.

Section 25.2518-2(d)(2) provides, in part, that 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 shall not be treated as an acceptance of such property or any of its benefits. A fiduciary, however, cannot retain a wholly discretionary power to direct the enjoyment of the disclaimed interest.

In this case, based upon the facts submitted and representations made, we conclude that the disclaimers of Spouse and Adult Child satisfy the four requirements of § 2518(b). The first requirement is satisfied because the disclaimers are in writing. The second requirement is satisfied because the disclaimers were delivered to Estate's executor and the trustees of the respective trusts not later than nine months after

Decedent's death, which was the transfer creating the interests disclaimed. The third requirement is satisfied because Spouse and Adult Child have represented that they have not and will not accept any of the disclaimed interests or benefits. The fourth requirement is satisfied because under State law, the disclaimed property will pass to and for the benefit of Grandchild and Adult Child's other issue, if any, and will not pass at the direction of Spouse or Adult Child. With respect to Spouse's disclaimer of jointly-held property, the disclaimer is a qualified disclaimer and satisfies the requirements of § 2518(a) only with respect to the portion of the property acquired with consideration provided by Decedent.

Accordingly, assuming the disclaimers are effective under State law, we conclude that the disclaimers of Spouse and Adult Child with respect to Decedent's probate property, property held jointly with Decedent, Decedent's Trust, and the GRAT will be considered qualified disclaimers under section 2518.

Rulings 4 and 5

Section 2601 provides that a tax is imposed on every generation-skipping transfer (GST).

Section 2602 provides that the amount of the GST tax is determined by multiplying the taxable amount by the applicable rate.

Section 2611(a) provides that the term "generation-skipping transfer" means: (1) a taxable distribution; (2) a taxable termination; and (3) a direct skip.

Section 2612(c) provides that the term "direct skip" means a transfer subject to a tax imposed by chapter 11 or 12 of an interest in property to a skip person.

Section 2613(a) provides, in part, that the term "skip person" means -- (1) a natural person assigned to a generation which is 2 or more generations below the generation assignment of the transferor, or (2) a trust -- (A) if all interests in such trust are held by skip persons, or (B) if -- (i) there is no person holding an interest in such trust, and (ii) at no time after such transfer may a distribution (including distributions on termination) be made from such trust to a nonskip person.

Section 2631(a) provides that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption amount which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor.

Section 2631(c) provides that, for purposes of subsection (a), the GST exemption amount for any calendar year shall be equal to the basic exclusion amount under § 2010(c) for such calendar year.

Section 2641(a) provides that the term “applicable rate” means, with respect to any generation-skipping transfer, the product of (1) the maximum Federal estate tax rate, and (2) the inclusion ratio with respect to the transfer.

Section 2641(b) provides that the term “maximum Federal estate tax rate” means the maximum rate imposed by § 2001 on the estates of decedents dying at the time of the taxable distribution, taxable termination, or direct skip, as the case may be.

Section 2642(a)(1) provides that, generally, the inclusion ratio with respect to any property transferred in a GST is the excess of one over the “applicable fraction.”

In this case, the assets passing to the GST Trust consist of property that is equal in value, as of the date of Decedent’s death, to the basic exclusion amount allowable to Decedent under § 2010(c). Provided the necessary exemption allocation is made, the property passing to the GST Trust will have an inclusion ratio of zero and will be exempt from GST tax. Any distributions from the GST Trust to Grandchild and Adult child’s other issue, if any, will not be subject to GST tax upon distribution.

The balance of Decedent’s Trust property passes to the Grandchild Trust as a direct skip with an inclusion ratio of one. Likewise, the GRAT Property passes to the Successor Trust as a direct skip with an inclusion ratio of one. The maximum Federal estate tax rate for purposes of computing the GST tax on such transfers is deemed to be zero, which when multiplied by any inclusion ratio, will result in an applicable rate of zero. Notice 2011-66, 2011-35 I.R.B. 184. Therefore, Decedent’s transfers to the Grandchild Trust and Successor Trust and distributions from those trusts are not subject to GST tax.

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 ruling, 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. This ruling is directed only to the taxpayers who requested it. Section 6110(k)(3) 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.

Sincerely,

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

Enclosures
Copy for § 6110 purposes