Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:PSI:04
PLR-104451-15

Date:
June 11, 2015

RE:

Legend

Taxpayer	=
Date 1	=
Trust 1	=
Son	=
Sibling 1	=
Sibling 2	=
Foundation	=
State 1	=
Date 2	=
State 2	=
Date 3	=
Trust 2	=
x	=
Date 4	=
State 1 Court	=
Trustee	=
State 1 Statute 1	=
State 1 Statute 2	=
State 1 Statute 3	=
State 1 Statute 4	=
State 2 Statute 1	=
State 2 Statute 2	=
State 2 Statute 3	=
Year 1	=
Year 2	=

Dear :

This letter responds to your authorized representative's letter, dated January 28, 2015, requesting a ruling on the gift tax consequences of the proposed disclaimer to be executed by Taxpayer.

Facts

The facts submitted and representations made are as follows:

On Date 1, Trust 1, an irrevocable trust, was established for the benefit of Son. Pursuant to Article I of Trust 1, the trustee shall distribute the net income of the trust for that year to Son for his life, provided that during any period or periods of any time Son is legally married, his spouse is to receive one-half of the income Son would otherwise be entitled. If Son dies leaving children, distribution of income is to be made to such children as are living on each distribution date, share and share alike; provided, however, that if Son leaves a surviving spouse, then spouse will receive all the distributable net income for spouse's life as falls within the term of Trust 1.

Pursuant to Article II, if Son dies leaving surviving him a spouse who was not in being at the date of these presents, or children, Trust 1 shall terminate upon the death of the survivor of spouse, children, Sibling 1 and Sibling 2 or the expiration of twenty-one years after the death of the survivor of Son, Sibling 1 and Sibling 2, whichever shall first occur. If Son leaves no spouse or children surviving, Trust 1 shall terminate upon the death of the survivor of Sibling 1 and Sibling 2. Article III provides that upon termination of Trust 1, the trustee shall deliver the entire corpus and undistributed income to Foundation. Trust 1 is being administered in State 1.

Taxpayer and Son were married on Date 2 in State 2. Taxpayer was not in being on Date 1. Son has adult children from a previous marriage and one surviving sibling, Sibling 1.

On Date 3, prior to his marriage to Taxpayer, Son established an irrevocable trust, Trust 2, for the benefit of Taxpayer. Article 6.1(b) of Trust 2 provides that during the lifetime of Taxpayer, as long as Taxpayer is cohabitating with Son, Taxpayer is to receive $x each month (adjusted monthly based upon an index) which is to be charged first to income then to principal until the first distribution of principal at age . In addition, after Son's death, and continuing until the first distribution of principal at age , the trustee shall pay for Taxpayer's direct medical and educational expenses. The Trustee may, in the Trustee's sole and absolute discretion, make distributions of principal to Taxpayer before or in addition to the principal distributions under Article 6.1(b)(iv) and 6.2, if the Trustee believes there are valid and supportable reasons

for the distribution and that Son's goal of making monthly distributions until taxpayer attains the age of will not be thwarted. Article 6.1(b)(iv) provides that upon Taxpayer attaining the age of years, one-third of Trust 2 shall be distributed to Taxpayer. One-half of the remainder of Trust 2 shall be distributed when Taxpayer attains the age of years, and the balance shall be distributed to Taxpayer at the age of years.

Article 6.1(b)(v) provides that if Taxpayer and Son marry, such that Taxpayer is entitled to receive and does receive distributions from Trust 1, and Taxpayer does not disclaim rights under Trust 1, Taxpayer's rights under Trust 2 shall terminate and assets of Trust 2 shall be distributed or held in trust as set forth in Section 6.3 of Trust 2.

Article 6.2 provides that if at the death of Son, Son and Taxpayer are cohabiting, the trustee shall hold and administer the balance of the trust estate for the benefit of Taxpayer and distributions shall be made as set forth in Article 6.1(b). If at the death of Son, Son and Taxpayer are not cohabiting or Taxpayer is deceased, the trustee shall distribute the trust to the beneficiaries listed in Article 6.3.

Article 6.3 provides that if upon the death of Taxpayer, the trust has not been distributed in full or if Taxpayer ceases to cohabitate with Son, whichever occurs earlier, the Trustee shall divide the trust estate into equal shares, one share for each named grandchild of Son as provided in Article 6.3, as are then living, or all for the survivor(s) of them.

In an affidavit**,** Taxpayer attests that Taxpayer did not participate in the establishment of Trust 2, had no control over the provisions Son made for Taxpayer's benefit or the conditions upon which Taxpayer was to receive (or not receive) those benefits. Taxpayer further attests that Taxpayer had no knowledge of Trust 2 until after it was established.

Taxpayer intends to execute and deliver to the Trustee of Trust 1 a disclaimer to irrevocably disclaim Taxpayer's entire beneficial interest in Trust 1. In the proposed disclaimer, Taxpayer states that none of the Trust 1 property has been distributed to Taxpayer, Taxpayer has not received or accepted any benefit or payment from Trust 1, and Taxpayer has not accepted any consideration in return for making this disclaimer. Taxpayer states that Taxpayer irrevocably disclaims Taxpayer's entire beneficial interest in Trust 1. The disclaimer is intended to be effective under State 1 and State 2 law. Based upon Article 1 of Trust 1, after Taxpayer disclaims Taxpayer's entire beneficial interest in Trust 1, all the net income of Trust 1 will be distributed to Son for his life. Furthermore, if Son dies leaving children, distribution of income shall be made to such children as are living on each distribution date, share and share alike. The disclaimer will be executed within nine months of Date 2, Taxpayer's and Son's marriage date.

On Date 4, by petition in State 1 Court, the trustee of Trust 1, Trustee, sought an order to deposit fifty percent of the income of Trust 1 (*i.e.*, the amount to be distributed to Son's spouse under Article 1 of Trust 1) (The Funds) with State 1 Court. State 1 Court denied the request, instead ordering Trustee to not distribute and continue to hold this amount in trust until further order of the court. Accordingly, as of the date of this ruling request, Taxpayer has not received any distributions from Trust 1.

Taxpayer requests the following rulings:

1. Taxpayer's disclaimer of Taxpayer's entire beneficial interest in Trust 1 within nine months following the marriage date will be deemed to be made within a reasonable time after knowledge of the existence of the transfer for purposes of § 25.2511-1(c)(2) of the Gift Tax Regulations.

2. Taxpayer's disclaimer of Taxpayer's entire beneficial interest in Trust 1 within nine months following their marriage will not constitute a taxable gift under § 2501 of the Internal Revenue Code.

3. The provisions in Trust 2 terminating Taxpayer's beneficial interest in such trust in the event Taxpayer does not disclaim Taxpayer's interest in Trust 1 do not constitute consideration in return for making the disclaimer or otherwise constitute the acceptance of ownership of the interest in Trust 1.

Law and Analysis

Trust 1 is administered in State 1. Under State 1 Statute 1, to be effective, a disclaimer must be in writing, declare the writing as a disclaimer, describe the interest disclaimed, be signed by the person making the disclaimer, and acknowledged in the manner provided for deeds of real estate to be recorded in State 1. State 1 Statute 2 provides that the disclaimer must be delivered to the trustee serving when the disclaimer is delivered. Under State 1 Statute 3 and State 1 Statute 4, a disclaimer may be made at any time unless (1) the disclaimant accepts the portion of the interest sought to be disclaimed; (2) the disclaimant voluntarily assigns, conveys, encumbers, pledges, or transfers the portion of the interest sought to be disclaimed or contracts to do so; (3) the portion of the interest sought to be disclaimed is sold pursuant to a judicial sale; or (4) the disclaimant is insolvent when the disclaimer becomes irrevocable.

Taxpayer and Son are residents of State 2. Under State 2 Statute 1, a disclaimer is effective when filed within a reasonable time after the person able to disclaim acquires knowledge of the interest. In the case of an interest created by a living trust a disclaimer is conclusively presumed to have been filed within a reasonable time if it is filed within nine months after whichever of the following times occurs latest: (1) the time

of the creation of the trust; (2) the time the first knowledge of the interest is acquired by the person able to disclaim; and (3) the time the interest becomes indefeasibly vested.

State 2 Statute 2 provides that the disclaimer must be in writing, signed by the disclaimant, identify the creator of the interest, describe the interest to be disclaimed and state the disclaimer and the extent of the disclaimer. State 2 Statute 3 provides that a disclaimer must be filed with the trustee or person responsible for distributing the interest to the beneficiary. State 2 Statute 4 provides that a disclaimer may not be made after the beneficiary has accepted the interest sought to be disclaimed.

Section 2501(a) imposes a tax, for each calendar year, on the transfer of property by gift by any individual, resident or nonresident.

Section 2511(a) provides that the gift tax imposed by § 2501 shall apply 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) provides, in relevant part, that, in the case of transfers creating an interest in the person disclaiming made before January 1, 1977, where the law governing the administration of the decedent's estate gives a 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* § 2518 and §§ 25.2518-1 through 25.2518-3 (providing rules for determining whether a disclaimer is a qualified disclaimer effective for estate and gift tax purposes, in the case of the 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 obtaining knowledge of the existence of the transfer creating the interest to be disclaimed, rather than within a reasonable time after the distribution or vesting of the interest. *See Jewett v. Commissioner*, 455 U.S. 305 (1982).

In this case, Taxpayer had knowledge of Trust 1 in Year 1. However, Taxpayer was not a beneficiary of Trust 1 until Taxpayer became Son's spouse on Date 4, in Year 2. Taxpayer had no interest in Trust 1 until Son married Taxpayer. Taxpayer will execute a disclaimer within nine months after Taxpayer's and Son's marriage, the date Taxpayer became Son's spouse. Accordingly, under these circumstances, the proposed disclaimer will be considered to be made within the reasonable 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. *See also Anderson v. Commissioner*, T.C. Memo. 1988-423. In this case, the disclaimed interest will pass to other beneficiaries as provided in Trust 1 and not pursuant to any direction on the part of Taxpayer.

Under § 25.2511-1(c), the disclaimers must be effective under local law. Under State 2 law, where Taxpayer and Son reside, Taxpayer's disclaimer of Taxpayer's entire interest in Trust 1 within nine months of marrying Son is conclusively presumed to have been filed within a reasonable time. State 2 Statute 1. Under State 1 law, where Trust 1 is being administered, Taxpayer may disclaim at any time unless the Taxpayer accepts the portion of the interest sought to be disclaimed or voluntarily assigns, conveys, encumbers, pledges or transfers the interest sought to be disclaimed. State 1 Statute 3 and State 1 Statute 4. As required under both State 1 and State 2 law, a disclaimer is invalid if it is made after Taxpayer has accepted the interest sought to be disclaimed. In this case, State 1 Court has ordered the Trustee of Trust 1 to not distribute and continue to hold the Funds of Trust 1 in trust until further order of the court. Consequently, as of the date of this ruling request, Taxpayer has not received any distributions from Trust 1. Accordingly, if Taxpayer satisfies the procedural requirements prescribed under the laws of State 1 and State 2, the disclaimer will be valid under local law.

Finally, under § 25.2511-1(c), the disclaimer must be made before the disclaimant has accepted the property. For purposes of § 25.2511-1(c), the disclaimant has accepted the benefits of the property if the disclaimant accepts consideration in return for the disclaimer. *See Anderson v. Commissioner*, T.C. Memo. 1988-423. To constitute consideration, the promise "must have been offered by one party, and accepted by the other, as one element of the contract." *Monroe v. Commissioner*, 124 F.3d 699, 709 (5th Cir. 1997). In *Monroe*, the court considered whether the decision to disclaim was part of a mutually-bargained-for consideration or a mere unenforceable hope of future benefit. *Monroe*, 124 F.3d at 709-710. *See also Lute v. United States*, 19 F.Supp.2d 1047 (D. Neb. 1998).

In this case, Taxpayer has not accepted any benefits of the disclaimed property, *i.e.,* the property in Trust 1. It is represented that Taxpayer has not received any distributions from Trust 1. Further, State 1 Court ordered that Trustee of Trust 1 not distribute any funds from Trust 1 to Taxpayer and, instead, ordered Trustee to hold the funds in trust until further order of the court. Further, Taxpayer has not and will not receive any consideration in return for the disclaimer. In order for Taxpayer's interest in

Trust 2 to be treated as consideration in return for the disclaimer, Taxpayer and Spouse would have to have entered into a mutual bargain or contract agreement. In this case, Article 6.1(b)(v) provides that if Taxpayer and Son marry, such that Taxpayer is entitled to receive and does receive distributions from Trust 1, and Taxpayer does not disclaim rights under Trust 1, Taxpayer's rights under Trust 2 shall terminate and assets of Trust 2 shall be distributed or held in trust as set forth in Section 6.3 of Trust 2. It is represented and Taxpayer attests that Taxpayer did not participate in the establishment of Trust 2, had no control over the provisions Son made for Taxpayer's benefit or the conditions upon which Taxpayer was to receive (or not receive) those benefits. Taxpayer further attests that Taxpayer had no knowledge of Trust 2 until after it was established. Accordingly, Taxpayer and Son did not enter into any bargain regarding Taxpayer's interest in Trust 1 and the proposed disclaimer. Therefore, Taxpayer did not accept any consideration in return for making the disclaimer.

Accordingly, based on the facts submitted and representations made, we conclude that Taxpayer's disclaimer of Taxpayer's entire beneficial interest in Trust 1 within nine months following the marriage date will be deemed to be made within a reasonable time after knowledge of the existence of the transfer for purposes of § 25.2511-1(c)(2). Moreover, we conclude that Taxpayer's disclaimer of Taxpayer's entire beneficial interest in Trust 1 within nine months following the marriage will not constitute a taxable gift under § 2501. Further, we conclude that the provisions in Trust 2 terminating Taxpayer's beneficial interest in such trust in the event Taxpayer does not disclaim Taxpayer's interest in Trust 1, do not constitute consideration in return for making the disclaimer or otherwise constitute the acceptance of ownership of the interest in Trust 1.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

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.

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.

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,

Lorraine E. Gardner
Senior Counsel, Branch 4
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

cc: