PETROCELLI FINANCIAL SERVICES LLC

Disclaimers

Basic Information

A disclaimer is a renunciation of property passing upon another's death, whether by will, beneficiary designation, or state intestacy laws. For federal estate, gift, and generation-skipping transfer tax purposes, the renounced property is treated as if it had never been transferred to the person making the qualified disclaimer (the disclaimant). The disclaimed property then passes, either outright or in trust, to the named alternate beneficiary.

A qualified disclaimer might be used, for example, when a decedent leaves all of his or her assets to his or her spouse, or if the spouse does not survive, to their children. If the spouse concludes he or she does not need all of the assets, he or she may wish to disclaim a portion of his or her interest in the decedent's estate.

A qualified disclaimer also may be used with respect to property not subject to the probate process, including life insurance and employee benefit plans. For example, a participant in a retirement plan may wish to name his or her spouse as the primary designated beneficiary of the plan and a charity as the contingent successor beneficiary. After the death of the plan participant, if the surviving spouse determines that he or she does not need the funds from the retirement plan, the surviving spouse can disclaim his or her interest and the funds will instead pass to the charity.

If the surviving spouse wishes, he or she can make a partial disclaimer of only a portion of the funds. Since funds in a retirement plan may be subject to both estate tax and income tax when passing to individual beneficiaries, such funds are often an efficient asset for satisfying a plan participant's charitable goals.

Description

To be effective for federal gift tax purposes (i.e., the transfer is not treated as a gift), the disclaimer must comply with the provisions of Section 2518 of the Internal Revenue Code.

For federal gift tax purposes, a qualified disclaimer is defined in Section 2518(b) as an irrevocable and unqualified refusal by a person to accept an interest in property, but only if:

1. The refusal or disclaimer is in writing;

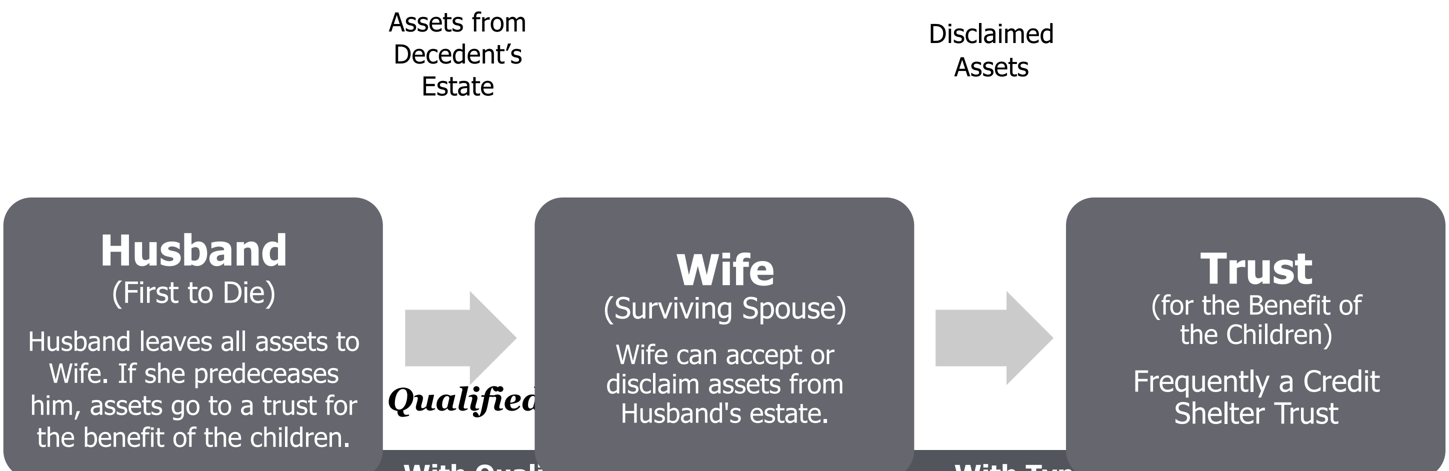
2. The written refusal is received by the transferor of the interest or his legal representative (usually the executor) not later than nine months after the date on which the transfer creating the interest in the disclaimant is made (generally the date of death), or if later, after the disclaimant's 21st birthday;
3. The disclaimant has not accepted the interest or any of its benefits; and,
4. As a result of the refusal, the interest passes, without any direction by the disclaiming person, to either the spouse of the decedent or a person, including charity, other than the disclaimant.

If the requirements of Section 2518(b) are not met, the renouncing person will be deemed to have received the assets and made a taxable gift.

An exception under Section 2518(c) provides that a renunciation that is valid under state law and meets requirements similar to those set forth under Section 2518(b) will be treated as a qualified disclaimer.

Tax Implications

Until benefits are paid, NQDC plans grow tax-deferred. Deferrals, contributions and interest earnings are taxed at the employee's ordinary income tax rates upon payout, or in the case of an ineligible plan, once the employee is vested. Once benefits are taxable to the executive (i.e., upon the employee's constructive receipt), the employer receives a deduction.



Qualified

	With Qualified Disclaimer Planning	With Typical A/B Trust Planning
Assets to Spouse	Spouse's choice, i.e., Spouse may keep the assets he or she wants and disclaim the rest. Disclaimed assets can pass to a Credit Shelter Trust.	Typically, the assets that exceed the applicable exemption. Assets within the applicable exemption amount typically pass to a Credit Shelter Trust.
Income from Credit Shelter Trust	A properly worded trust can distribute income to Spouse for his or her lifetime.	A properly worded trust can distribute income to Spouse for his or her lifetime.
Principal of Credit Shelter Trust	Principal may also be available (subject to an ascertainable standard if Spouse is the trustee).	Principal may also be available (subject to an ascertainable standard if Spouse is the trustee).

Petrocelli Financial Services LLC

Robert Petrocelli

Phone: (212) 261-9530
Fax: (212) 261-9529
Email: rpetrocelli@ft.newyorklife.com

Website: http://www.RobertPetrocelli.com