§ 25.2518–1 Qualified disclaimers of property; in general.

(a) Applicability—(1) In general. The rules described in this section, § 25.2518–2, and § 25.2518–3 apply to the qualified disclaimer of an interest in property which is created in the person disclaiming by a transfer made after December 31, 1976. In general, a qualified disclaimer is an irrevocable and unqualified refusal to accept the ownership of an interest in property, subject to rules relating to the determination of when a transfer creating an interest occurs, see § 25.2518–2(c)(3) and (4).

(2) Example. The provisions of paragraph (a)(1) of this section may be illustrated by the following example:

Example. W creates an irrevocable trust on December 10, 1968, and retains the right to receive the income for life. Upon the death of W, which occurs after December 31, 1976, the trust property is distributable to W’s surviving issue, per stirpes. The transfer creating the remainder interest in the trust occurred in 1968. See § 25.2511–1(c)(2). Therefore, section 2518 does not apply to the disclaimer of the remainder interest because the transfer creating the interest was made prior to January 1, 1977. If, however, W had caused the gift to be incomplete by also retaining the power to designate the person or persons to receive the trust principal at death, and, as a result, no transfer (within the meaning of § 25.2511–1(c)(2)) of the remainder interest was made at the time of the creation of the trust, section 2518 would apply to any disclaimer made after W’s death with respect to an interest in the trust property.

(3) Paragraph (a)(1) of this section is applicable for transfers creating the interest to be disclaimed made on or after December 31, 1997.
§ 25.2518–2 Requirements for a qualified disclaimer.

(a) In general. For the purposes of section 2518(a), a disclaimer shall be a qualified disclaimer only if it satisfies the requirements of this section. In general, to be a qualified disclaimer—

(1) The disclaimer must be irrevocable and unqualified;

(2) The disclaimer must be in writing;

(3) The writing must be delivered to the person specified in paragraph (b) (2) of this section within the time limitations specified in paragraph (c) (1) of this section;

(b) Effect of local law—(1) Interests created before 1982. A disclaimer of an interest created in a taxable transfer before 1982 which otherwise meets the requirements of a qualified disclaimer under section 2518 and the corresponding regulations but which, by itself, is not effective under applicable local law to divest ownership of the disclaimed property from the disclaimant and vest it in another, is nevertheless treated as a qualified disclaimer under section 2518 if, under applicable local law, the disclaimed interest in property is transferred, as a result of attempting the disclaimer, to another person without any direction on the part of the disclaimant. An interest in property will not be considered to be transferred without any direction on the part of the disclaimant if, under applicable local law, the disclaimant has any discretion (whether or not such discretion is exercised) to determine who will receive such interest. Actions by the disclaimant which are required under local law merely to divest ownership of the property from the disclaimant and vest ownership in another person will not disqualify the disclaimer for purposes of section 2518(a). See § 25.2518–2(d)(1) for rules relating to the immediate vesting of title in the disclaimant.

(1) Interests created after 1981. [Reserved]

(2) Creditor’s claims. The fact that a disclaimer is voidable by the disclaimant’s creditors has no effect on the determination of whether such disclaimer constitutes a qualified disclaimer. However, a disclaimer that is wholly void or that is voided by the disclaimant’s creditors cannot be a qualified disclaimer.

(c) Examples. The provisions of paragraphs (c) (1) and (2) of this section may be illustrated by the following examples:

Example (1). F dies testate in State Y on June 17, 1978. G and H are beneficiaries under the will. The will provides that any disclaimed property is to pass to the residuary estate. H has no interest in the residuary estate. Under the applicable laws of State Y, a disclaimer must be made within 6 months after the death of the testator. Seven months after F’s death, H disclaimed the real property H received under the will. The disclaimer statute of State Y has a provision stating that an untimely disclaimer will be treated as an assignment of the interest disclaimed to those persons who would have taken had the disclaimer been valid. Pursuant to this provision, the disclaimed property became part of the residuary estate. Assuming the remaining requirements of section 2518 are met, H has made a qualified disclaimer for purposes of section 2518(a).

Example (2). Assume the same facts as in example (1) except that the law of State Y does not treat an ineffective disclaimer as a transfer to alternative takers. H assigns the disclaimed interest by deed to those who would have taken had the disclaimer been valid. Under these circumstances, H has not made a qualified disclaimer for purposes of section 2518 (a) because the disclaimant directed who would receive the property.

Example (3). Assume the same facts as in example (1) except that the law of State Y requires H to pay a transfer tax in order to effectuate the transfer under the ineffective disclaimer provision. H pays the transfer tax. H has made a qualified disclaimer for purposes of section 2518 (a).

(d) Cross-reference. For rules relating to the effect of qualified disclaimers on the estate tax charitable and marital deductions, see §§ 20.2055–2(c) and 20.2056(d)–1 respectively. For rules relating to the effect of a qualified disclaimer of a general power of appointment, see § 20.2041–3(d).