Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201518007**
Release Date: 5/1/2015

7520.01-00, 9100.00-00

Third Party Communication: None
Date of Communication: Not Applicable
Person To Contact:

Telephone Number:

Refer Reply To:
CC:PSI:B04
PLR-126064-14
Date:
December 29, 2014

Re:

Legend:

Settlor	=
CLAT 1	=
CLAT 2	=
Charitable Organization	=
Trust 1	=
Trust 2	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
Year 1	=
Year 2	=
Month A	=
Month B	=
Month C	=
Month D	=
r	=
s	=
t	=
Attorney	=
Certified Public Accountant	=

© 2006-2020, CPC Holdings, LLC. All rights reserved.

Dear :

This letter responds to a letter from your authorized representative dated June 25, 2014, requesting an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make an election under § 7520(a) of the Internal Revenue Code. The facts and representations submitted are summarized as follows.

CLAT 1

On Date 1, Settlor transferred property, with a stated value of $r, to an irrevocable trust (CLAT 1), described as a charitable lead annuity trust. The terms of the trust provide that an annuity is to be paid to Charitable Organization for a period of s years. On the expiration of the s-year period, the remaining trust property is to be divided between Trust 1 and Trust 2 and held for the individual beneficiaries of those trusts.

On Date 2, Settlor filed a gift tax return, Form 709, United States Gift (and Generation-Skipping Transfer) Tax return, reporting the transfer. The reported value of the charitable annuity was determined using the § 7520 Federal midterm interest rate for Month A, a month that was two months preceding Month B, the month in which the Date 1 transfer was made. However, the gift tax return did not include the statement and information required under § 25.7520-2(b) for making a prior month election, that is, an election to value the charitable interest using a prior-month interest rate instead of the interest rate prescribed for the month in which the transfer was made. The statement and information were subsequently attached to the Form 1041 (U.S. Income Tax Return for Estates and Trusts) filed for CLAT 1 for Year 1 on Date 5.

CLAT 2

On Date 3, Settlor transferred property, with a stated value of $t, to another irrevocable trust (CLAT 2), described as a charitable lead annuity trust. As with CLAT 1, the terms of CLAT 2 provide that an annuity is to be paid to Charitable Organization for a period of s years. On the expiration of the s-year period, the remaining trust property is to be divided between Trust 1 and Trust 2 and held for the individual beneficiaries of those trusts.

On Date 4, Settlor filed a gift tax return reporting the transfer. The reported value of the charitable annuity was again determined using the § 7520 interest rate for Month C, a month that was two months preceding Month D, the month in which the Date 3 transfer was made. This gift tax return, as well, did not include the statement and information required under § 25.7520-2(b) for making an election to use a prior month interest rate in determining the value of the charitable annuity.

© 2006-2020, CPC Holdings, LLC. All rights reserved.

Settlor relied on Attorney and Certified Public Accountant to prepare and file the prior-month elections under § 7520(a) as part of her gift tax returns filed for Year 1 and Year 2. Attorney, who structured the trusts, directed Certified Public Accountant, who prepared the Form 1041 for Year 1, to attach the election to the Form 1041.

Settlor has requested an extension of time under §§ 301.9100-1 and 301.9100-3 to file amended Form 709 gift tax returns making the respective prior-month elections in valuing the charitable annuities payable from CLAT 1 and CLAT 2.

Law and Analysis

Section 2512(a) of the Internal Revenue Code provides that if the gift is made in property, the value thereof at the date of the gift shall be considered the amount of the gift.

Section 2522(a) provides that in computing taxable gifts for the calendar year, there shall be allowed as a deduction the amount of all gifts made during the year to or for the use of the charitable purposes described therein.

Section 2522(c)(2)(B) provides that where a donor transfers an interest in property to a person, or for a use, described in subsection (a) and an interest in the same property is retained by the donor, or is transferred or has been transferred (for less than an adequate and full consideration in money or money's worth) from the donor to a person, or for a use, not described in subsection (a), no deduction shall be allowed for the interest which is, or has been transferred to the person, or for the use, described in subsection (a) unless, in the case of any interest other than a remainder interest, the interest is in the form of a guaranteed annuity or is a fixed percentage distributed yearly of the fair market value of the property (to be determined yearly).

Section 25.2522(c)-3(c)(2)(vi)(a) provides, in part, that the charitable interest is a guaranteed annuity interest, whether or not such interest is in trust. The term "guaranteed annuity interest" means an irrevocable right pursuant to the instrument of transfer to receive a guaranteed annuity. A guaranteed annuity is an arrangement under which a determinable amount is paid periodically, but not less often than annually, for a specified term of years or for the life or lives of certain individuals, each of whom must be living at the date of the gift and can be ascertained at such date.

Under § 25.2512-5(d), the fair market value of annuities is the present value of such interests determined by the use of standard or special § 7520 actuarial factors. See also § 25.2512-5A(f)(1).

© 2006-2020, CPC Holdings, LLC. All rights reserved.

Section 7520(a) provides, in part, that the value of any annuity shall be determined

> (1) under tables prescribed by the Secretary, and
>
> (2) by using an interest rate (rounded to the nearest 2/10ths of 1 percent) equal to 120 percent of the Federal midterm rate in effect under § 1274(d)(1) for the month in which the valuation date falls.

Under § 7520(a), if a gift tax charitable contribution is allowable for any part of the property transferred, the taxpayer may elect to use such Federal midterm rate for either of the two months preceding the month in which the valuation date falls for purposes of paragraph (2). In the case of transfers of more than one interest in the same property with respect to which the taxpayer may use the same rate under paragraph (2), the taxpayer shall use the same rate with respect to each such interest.

Section 25.7520-2(a)(1) of the Procedure and Administration Regulations provides, in part, that the fair market value of annuities for which a gift tax charitable deduction is allowable is the present value of such interests determined under § 25.7520-1.

Section 25.7520-2(a)(2) provides, in part, that if any part of the property interest transferred qualifies for a gift tax charitable deduction under § 2522, the donor may elect to compute the present value of the interest transferred by use of the § 7520 interest rate for the month during which the gift is made or the § 7520 interest rate for either of the two months preceding the month during which the gift is made. The interest rate for the month so elected is the applicable § 7520 interest rate.

Section 25.7520-2(b)(1) provides that a taxpayer makes a prior-month election under paragraph (a)(2) of this section by attaching the information described in paragraph (b)(2) of this section to the donor's gift tax return or to an amended return for that year that is filed within 24 months after the later of the date the original return for the year was filed or the due date for filing the return.

Section 25.7520-2(b)(2) provides that a statement that the prior-month election under § 7520(a) of the Code is being made and that identifies the elected month must be attached to the gift tax return (or to the amended return).

Sections 301.9100 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election. Section 301.9100-1(a).

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and

© 2006-2020, CPC Holdings, LLC. All rights reserved.

301.9100-3 to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Code except subtitles E, G, H, and I.

Section 301.9100-3(a) provides, in part, that requests for relief subject to § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Section 301.9100-3(b)(1) provides, in part, except as provided in § 301.9100-3(b)(3)(i) through (iii), that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Settlor is granted an extension of time of 120 days from the date of this letter to file amended returns making the prior month elections described above. The elections will be effective as of Date 2 for CLAT 1 and Date 4 for CLAT 2.

The elections should be made on Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Return for the years in which the transfers were made, and filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to each Form 709. A copy is enclosed for this purpose.

Except as expressly provided 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 requesting it. Section 6110(k)(3) of the Code 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 representatives.

© 2006-2020, CPC Holdings, LLC. All rights reserved.

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,

Associate Chief Counsel
(Passthroughs & Special Industries)

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

Enclosures: Copy for § 6110 purposes
Two copies of this letter

© 2006-2020, CPC Holdings, LLC. All rights reserved.