

Internal Revenue Service

Number: **200743001**
Release Date: 10/26/2007
Index Number: 529.00-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:4
PLR-134069-06
Date: JUNE 15, 2007

In Re:

Legend:

Donor	=
Year	=
GC1	=
GC2	=
GC3	=
GC4	=
GC5	=
GC6	=
GC7	=
GC8	=
\$X	=
\$Y	=

Dear :

This is in response to the letter dated June 16, 2006, submitted on your behalf by your authorized representative, concerning the 5-year election under section 529(c)(2)(B) of the Code with respect to your contributions to qualified tuition program (QTP) accounts.

The facts submitted and representations made are as follows:

In Year, Donor contributed \$X to each of 8 separate QTP accounts for the benefit of each of Donor's 8 grandchildren (GC1, GC2, GC3, GC4, GC5, GC6, GC7, and GC8).

All of the gifts were reported on Donor's timely filed Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return. In an attachment to Part 2 of Schedule A of the Form 709, Donor stated her intent to prorate each contribution of \$X over a 5-year period. However, Donor failed to check the box on Line B of Schedule A to make the election under section 529(c)(2)(B) to treat each gift as ratably made over the 5-year period beginning in Year. Each contribution of \$X was not in excess of five times the gift tax annual exclusion amount under section 2503(b) for Year.

Donor requests a ruling that she substantially complied with the requirements to make the election under section 529(c)(2)(B).

Section 529(c)(2)(A) provides that any contribution to a QTP on behalf of a designated beneficiary shall be treated as a completed gift of a present interest in property to such beneficiary. Section 529(c)(2)(B) provides that if the aggregate amount of contributions described in subparagraph (A) during the calendar year by a donor exceeds the limitation for such year under section 2503(b), such aggregate amount shall, at the election of the donor, be taken into account for purposes of such section ratably over the 5-year period beginning with such calendar year.

Section 1.529-5(b)(2) of the proposed regulations provides that the 5-year election is applicable only with respect to contributions not in excess of five times the section 2503(b) exclusion amount available in the calendar year of the contributions. Any excess may not be taken into account ratably and is treated as a taxable gift in the calendar year of the contribution. The proposed regulation also provides that the election is to be made on Form 709 for the calendar year in which the contribution is made.

In this case, Donor did not comply with the instructions on Form 709 in that she failed to check the box on Line B of Schedule A in order to make the election under section 529(c)(2)(B). However, literal compliance with procedural instructions to make an election is not always necessary. See Hewlett Packard Co. v. Commissioner, 67 T.C. 736 (1977), acq. in result, 1979-1 C.B. 1. Thus, an election that does not strictly comply with the instructions on Form 709 will be deemed valid if the information on the return is sufficient to indicate that the taxpayer intended to make the election.

In this case, on the attachment to Part 2 of Schedule A, each gift to each grandchild was listed with a value of \$Y and the description of each gift was stated as a "gift of cash to a Section 529 qualified state tuition program (total gift of \$X, prorated over 5 years)." Based on the facts submitted and representations made, we conclude that the attachment to Donor's gift tax return for Year contains sufficient information to constitute substantial compliance with the requirements for making the election. Accordingly, Donor shall be deemed to have made a valid and timely election under section 529(c)(2)(B).

A copy of this letter should be sent to the Internal Revenue Service Center, Cincinnati, OH 45999, to be incorporated with Donor's gift tax return for Year. A copy is included for this purpose.

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. Except as provided herein, no opinion is expressed or implied concerning the federal tax consequences of the transaction referenced in this letter.

This letter ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with a power of attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Katherine A. Mellody
Senior Technician Reviewer
Branch 4
(Office of Passthroughs and
Special Industries)

Enclosures:

Copy for section 6110 purposes
Copy of this letter