

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:2 - PLR-106366-03

Date:

July 23, 2003

Trust =

Foundation =

d1 =

Year 1 =

Year 2 =

Year 3 =

a =

b =

Dear :

This is in reply to a letter dated December 5, 2002, and subsequent correspondence, submitted on behalf of the Trust by its authorized representative, requesting that the Service grant the Trust an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations to make an election under § 642(c)(1) of the Internal Revenue Code for its Year 1 taxable year.

The information submitted states that the grantor of the Trust died on d1. The Trust, as amended, provides that after certain specific bequests, all trust corpus and accumulated income should be distributed to the Foundation and the Trust will terminate, but not until the Foundation has received its qualification as a tax-exempt charity from the Service. The trustees of the Trust hired an attorney to prepare documents including the grantor's estate tax return and the income tax returns of the Trust.

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On the income tax return for the Year 1 taxable year, the Trust incorrectly claimed an income distribution deduction under § 661 for \$a, the amount set aside for the Foundation pending the Foundation's qualification as a tax-exempt charity.

In preparing the Trust's Year 3 income tax returns, the new income tax preparers of the Trust and Foundation discovered that the Year 1 income tax return was incorrect. The income tax preparers prepared and filed an amended Year 2 income tax return, including a timely § 642(c)(1) election, claiming a charitable deduction of \$b, representing deductible amounts of Year 2 income paid to charity in Year 3. These amounts were not claimed as a charitable deduction on the Year 3 return. The date to file an effective election under § 642(c)(1) for the Year 1 taxable year, allowing a deduction for amounts paid to charity in Year 2, had already passed. Therefore, the Trust requested an extension to file a § 642(c)(1) election for Year 1 under § 301.9100-3.

Section 642(c)(1) provides that in the case of an estate or trust, there shall be allowed as a deduction in computing its taxable income any amount of the gross income, without limitation, which pursuant to the terms of the governing instrument is, during the taxable year, paid for a purpose specified in § 170(c). If a charitable contribution is paid after the close of such taxable year and on or before the last day of the taxable year following the close of such taxable year, then the trustee or administrator may elect to treat such contribution as paid during such taxable year. The election shall be made at such time and in such manner as the Secretary prescribes by regulation.

Section 1.642(c)-1(b)(2) of the Income Tax Regulations provides that the election under § 642(c)(1) shall be made not later than the time, including extensions thereof, prescribed by law for filing the federal income tax return for the succeeding taxable year.

Section 1.642(c)-1(b)(3) provides that the election shall be made by filing with the income tax return (or amended return) for the taxable year in which the contribution is treated as paid a statement which (i) states the name and address of the fiduciary, (ii) identifies the estate or trust for which the fiduciary is acting, (iii) indicates that the fiduciary is making an election under § 642(c)(1) in respect of contributions treated as paid during such taxable year, (iv) gives the name and address of each organization to which any such contribution is paid, and (v) states the amount of each contribution and date of actual payment or, if applicable, the total amount of contributions paid to each organization during the succeeding taxable year, to be treated as paid in the preceding taxable year.

Under § 301.9100-1(c), the Commissioner may grant a reasonable extension of time 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 E, G, H, and I. Requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good

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faith, and that granting relief will not prejudice the interests of the government. Section 301.9100-3(a). Section 301.9100-1(b) defines a regulatory election to include an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

Sections 301.9100-1 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 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2.

Based on the information submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. As a result, the Trust is granted an extension of time for 60 days from the date of this letter to file an election under § 642(c)(1) for the Trust's Year 1 taxable year. The election must be made on the amended return for the Trust's Year 1 taxable year. The amended return must be filed within the sixty day period with the service center where the Trust files its returns. A copy of the amended return must be filed with the Service office currently examining the Trust's returns. A copy of this letter should be attached to the amended returns. Copies are included for that purpose.

Except as specifically set forth above, we express no opinion concerning the federal tax consequences of the transactions described above under any other provisions of the Code, including whether the Trust was entitled to § 642(c)(1) deductions.

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

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to X's authorized representative.

Sincerely,

HEATHER C. MALOY
Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures: 2

Copy of this letter

Copy for § 6110 purposes