

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact:

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Telephone Number:

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CC:PSI:B02 – PLR-162381-03

Date:

January 20, 2004

Trust =

Charity =

d1 =

Year 1 =

Year 2 =

Year 3 =

a =

b =

Dear :

This is in reply to your letter dated September 9, 2003, and subsequent correspondence, submitted by you on behalf of the Trust, 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 of Year 1. The Trust provides that the remaining trust principal after the payment of taxes and

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other expenses should be distributed to Charity. No distributions to Charity were made during Year 1. On the income tax return for the Year 1 taxable year, the Trust incorrectly claimed a charitable deduction under § 642(c)(2) for \$a, which represented all of the Trust's gross income for Year 1.

In Year 2, the Trust distributed all of its gross income to Charity and claimed a charitable deduction under § 642(c) for the entire amount of \$b on its income tax return for the Year 2 taxable year. The Trust made final distributions to Charity in Year 3 and terminated.

The Service examined the Trust's Year 1 income tax return and determined that a § 642(c)(2) deduction was not allowable because the Trust was not a trust eligible to take a set-aside deduction. An amended Year 2 income tax return was filed which included a § 642(c)(1) election to deduct amounts of Trust gross income paid to the Charity in Year 3. 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

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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 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. An amended Year 2 return must be filed which does not claim a § 642(c)(1) deduction for amounts of Year 2 gross income paid to the Charity in Year 2. The amended returns must be filed within the sixty day period with the service center where the Trust files its returns. Copies of the amended returns 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.

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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.

Sincerely,

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

Enclosures: 2  
Copy of this letter  
Copy for § 6110 purposes