

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

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CC:PSI:B03

PLR-117395-06

Date: October 6, 2006

Legend:

Trust =

A =

B =

Trustee =

Court =

D1 =

D2 =

D3 =

x% =

y% =

Tax Year #1 =

Tax Year #2 =

Charity #1 =

Charity #2 =

Dear _____ :

This letter responds to a letter dated March 13, 2006, and subsequent correspondence, written on behalf of Trust, requesting a ruling under § 301.9100-3 of the Procedure and Administration Regulations.

Facts

The information submitted discloses that Trust was created on D1. The terms of Trust provided that the property in Trust was to be held for the lifetime benefit of A, and upon A's death for the lifetime benefit of B, if B survived A. Upon the death of B, Trust was to terminate with the principal of Trust, together with any accrued income to be paid x% to Charity #1 and y% to Charity #2. When B, who survived A, died on D2, litigation ensued as to the proper amount of payments to Charity #1, Charity #2, and the Estate of B. The litigation concluded with a ruling on D3 by Court.

Trustee intended to make a timely election under § 642(c) to claim a deduction in Tax Year #1 for distributions made in Tax Year #2 to Charity #1 and Charity #2. However, Trustee failed to make the timely § 642(c) election.

Law and Analysis

Section 642(c)(1) of the Internal Revenue Code provides that, in the case of an estate or trust (other than a trust meeting the specifications in subpart B of part I of subchapter J of Chapter 1 of the Code), there shall be allowed as a deduction in computing its taxable income (in lieu of the deduction allowed by § 170(a), relating to the deduction for charitable, etc., contributions and gifts) 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) (determined without regard to § 170(c)(2)(A)). If a charitable contribution is paid after the close of such taxable year and on or before the last day of the 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 regulations.

Section 1.642(c)-1(b)(1) of the Income Tax Regulations provides that, for purposes of determining the deduction allowed under § 1.642(c)-1(a), the fiduciary (as defined in § 7701(a)(6)) of an estate or trust may elect under § 642(c)(1) to treat as paid during the taxable year (whether or not such year begins before January 1, 1970) any amount of gross income received during such taxable year or any preceding taxable year which is otherwise deductible under § 642(c)(1) and which is paid after the

close of such taxable year but on or before the last day of the next succeeding taxable year of the estate or trust. The preceding sentence applies only in the case of payments actually made in a taxable year beginning after December 31, 1969. No election shall be made, however, in respect of any amount which was deducted for any previous taxable year or which is deducted for the taxable year in which such amount is paid.

Section 1.642(c)-1(b)(2) provides that the election under § 1.642(c)-1(b)(1) shall be made not later than the time, including extensions thereof, prescribed by law for filing the 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 the 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 the contributions paid to each organization during the succeeding taxable year, to be treated as paid in the preceding taxable year.

Section 301.9100-1(c) provides that the Commissioner may grant a reasonable extension of time under the rules set forth in § 301.9100-2 and § 301.9100-3 to make a regulatory election, or a statutory election (but not more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code, except subtitles E, G, H, and I. 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.

Section 301.9100-2 provides the guidelines the Commissioner will use to determine whether to grant an automatic extension of time for making certain elections.

Section 301.9100-3 provides the guidelines for granting extensions of time for making elections that do not meet the requirements of § 301.9100-2. Section 301.9100-3(a) provides that requests for relief subject to § 301.9100-3 will be granted when the taxpayer provides evidence (including affidavits described in § 301.9100-3(e)) 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.

Conclusion

Based solely on the facts submitted and the representations made, we conclude that Trust has satisfied the requirements of § 301.9100-1 and § 301.9100-3. As a result, Trust is granted an extension of sixty (60) days from the date of this letter to make the election under § 642(c) to claim a deduction in Tax Year #1 for distributions made in Tax Year #2 to Charity #1 and Charity #2. The election must be made on the amended return for Trust's Tax Year #1 taxable year. The amended return must be filed within the sixty (60) day period with the service center where the Trust files its returns. A copy of this letter should be attached to the amended return.

Except as specifically set forth above, we express no opinion concerning the federal tax consequences of the above described facts under any other provision of the Code.

This 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.

Sincerely,

/s/

William P. O'Shea
Acting Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2):

Copy of this letter

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