

## Internal Revenue Service

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Department of the Treasury  
Washington, DC 20224

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### LEGEND

Estate =

Trust =

Year 1 =

Year 2 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Grantor =

Foundation =

x =

State =

Dear \_\_\_\_\_ :

We received a letter dated June 9, 2009, and subsequent correspondence, submitted by the Estate's authorized representative on behalf of the Estate, requesting an extension of time pursuant to §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make an election under § 642(c)(1) of the Internal Revenue Code (Code) for the Year 1 taxable year. This letter responds to that request.

### FACTS

Grantor created the Trust as a revocable trust on Date 1, and amended the Trust on Date 2, Date 3, and Date 4. The terms of the Trust, as amended, provided that on the death of Grantor, the Trust would become irrevocable. The terms of the Trust also provided that on Grantor's death, after the trustee provided for the specific gifts described in Article 4 of the trust agreement, the trustee was required to distribute, free of trust, the balance of the assets in the Trust to the Foundation. The Estate represents that the Foundation is a State nonprofit public benefit corporation and otherwise satisfies the requirements in § 642(c) for a deduction for an amount paid or permanently set aside for a charitable purpose.

Grantor died on Date 5. On that date, the Trust became irrevocable and became part of the Estate. The Estate represents that in Year 1, the Estate received gross income of \$x, but did not report the income on the Estate's Year 1 fiduciary income tax return. During Year 1 and Year 2, the Estate made offsetting distributions of the income the Estate received in Year 1 to the Foundation. The Estate represents the offsetting distributions the Estate made in Year 1 and Year 2 were not claimed as a deduction on any fiduciary income tax return. The Estate failed to make a timely election under § 642(c)(1) to treat the distributions made to the Foundation before the close of Year 2 as made in Year 1 and requested an extension of time to file a § 642(c)(1) election for Year 1 under §§ 301.9100-1 and 301.9100-3.

### LAW AND ANALYSIS

Section 642(c)(1) provides that in the case of an estate or trust (other than a trust meeting the specifications of 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 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) 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 which is 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 an 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.

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 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 301.9100-1(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 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.

Section 301.9100-3(a) provides that requests for relief subject to § 301.9100-3 will be granted when the taxpayer provides the 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 on the information submitted and representations made, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. Accordingly, the Estate is granted an extension of time of sixty (60) days following the date of this letter to file an election under § 642(c)(1) to claim a deduction in the Year 1 taxable year for distributions made in Year 2. This ruling is conditioned on the Estate filing an amended return for Year 1, on which the Estate must: (1) make the election under § 642(c)(1) to claim a deduction on the Year 1 amended return for the distributions made by the close of Year 2, (2) include the Estate's Year 1 income in the amount of \$x and (3) claim a deduction for the Year 1 distributions under § 642(c)(1). The amended return must be filed within the sixty-day period following the date of this letter with the service center where the Estate files its returns. A copy of this letter should be attached to the amended return.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

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

In accordance with a power of attorney on file with this office, we are sending a copy of this letter to your authorized representative.

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 a ruling, it is subject to verification on examination.

Sincerely,

/s/

Curt Wilson  
Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2):

Copy of this letter  
Copy for § 6110 purposes