

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201202019**
Release Date: 1/13/2012

Third Party Communication: None
Date of Communication: Not Applicable
Person To Contact:

Index Numbers: 642.03-00, 9100.26-00

, ID No.
Telephone Number:

Refer Reply To:
CC:PSI:B03
PLR-122990-11
Date:
September 26, 2011

LEGEND

Trust =

Trustee =

Year 1 =

Year 2 =

Foundation =

X =

Dear :

This letter responds to your letter dated May 24, 2011, and subsequent correspondence, submitted on behalf of the Trust by its authorized representative, requesting an extension of time under § 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.

FACTS

The Trust made charitable contributions to the Foundation in Year 2 in the amount of X. The Trust represents that the Foundation is exempt from tax under § 501(c)(3) and contributions to which are deductible for federal income tax purposes. Trustee intended to make an election to treat the charitable contribution as paid in Year 1. However, Trustee failed to make the election.

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) 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 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 the term “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 rules governing automatic extensions of time for making certain elections. Section 301.9100-3 provides the standards the Commissioner will use to determine whether to grant an extension of time for regulatory 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 solely on the information submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. As a result, Trust is granted an extension of time of 120 days from the date of this letter to file an election under § 642(c)(1) to claim a deduction in the Trust's Year 1 taxable year for charitable contributions made in Year 2. The election must be made on the amended return for the Trust's Year 1 taxable year. The amended return for Year 1 must be filed within the 120-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 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 ruling request, it is subject to verification on examination.

Sincerely,

Richard T. Probst
Senior Technician Reviewer, Branch 3
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2):

A copy of this letter
A copy for § 6110 purposes

cc: