

Internal Revenue Service

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May 16, 2023

LEGEND

Trust =

Year 1 =

Year 2 =

Dear :

This letter responds to a letter dated November 7, 2022, and subsequent correspondence, submitted on behalf of Trust by its authorized representatives, requesting that the Service grant Trust an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations to make an election to treat distributions of gross income made by Trust to one or more charitable organizations during the taxable year as if made in the preceding taxable year.

FACTS

According to the information submitted, Trust files its federal income tax return on a calendar year basis. Trust made distributions to one or more charitable organizations (the "Contributions") during its Year 2 taxable year. Trust intended to have the Contributions treated as though paid in Year 1 as permitted under § 642(c)(1) of the Internal Revenue Code ("Code"). However, due to inadvertence, Trust's § 642(c)(1) election was not timely filed.

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 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 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(a)(1) of the Income Tax Regulations provides that any part of the gross income of an estate or trust which, pursuant to the terms of the governing instrument is paid (or treated under paragraph (b) of § 1.642-1 as paid) during the taxable year for a purpose specified in § 170(c) shall be allowed as a deduction to such estate or trust in lieu of the limited charitable contributions deduction authorized by § 170(a).

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 such taxable year or any preceding taxable year 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 amended return) for the taxable year in which the contribution is treated as paid a statement which (1) 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 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 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 Code except subtitles E, G, H, and I. Section 301.9100-1(b) defines the term “regulatory election” as including an election whose due date is prescribed by a regulation published in the Federal Register.

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 facts submitted and 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 time of 120 days from the date of this letter to file an election under § 642(c)(1) to claim a deduction in Trust's Year 1 taxable year for the Contributions made in Year 2. This ruling is conditioned on Trust filing an income tax return (or amended return) for its Year 1 taxable year on which Trust must: (1) make the election under § 642(c)(1) to claim a deduction in Year 1 for the Contributions made by the close of Year 2, and (2) claim a deduction for such Contributions under § 642(c)(1). If necessary, Trust must file an income tax return (or amended return) for Trust's Year 2 taxable year to properly report the tax consequences of the Contribution in a manner consistent with the election having been made. These income tax returns (or amended returns) must be filed within the 120-day period following the date of this letter with the service center where the Trust files its returns. A copy of this letter should be attached to each income tax return (or amended return).

Except as specifically set forth above, we express or imply no opinion concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, we express or imply no opinion concerning whether the Trust is entitled to a deduction under § 642(c). In addition, § 301.9100-1(a) provides that the granting of an extension of time for making an election is not a determination that the taxpayer is otherwise eligible to make the election.

The rulings contained in this letter are 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.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) provides that this ruling 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 Trust's authorized representatives.

Sincerely,

Holly Porter
Associate Chief Counsel
(Passthroughs & Special Industries)

By: /s/ _____
Jennifer N. Keeney
Senior Counsel, Branch 1
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

cc: