

Internal Revenue Service

Department of the Treasury
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Date:
October 14, 2008

In Re:

Legend:

Trust =

Date 1 =

Date 2 =

Trustor =

Trustee =

Foundation =

City =

Year 1 =

Year 2 =

Dear :

This is in response to a letter dated September 8, 2008, submitted on behalf of the Trust, requesting that the Service grant an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations to file an election under § 642(c) of the Internal Revenue Code.

Facts

The information submitted states that the Trust was created on Date 1 as a revocable trust. The terms of the Trust, as amended, provided that the property in the Trust was to be held for the lifetime benefit of the Trustor, and upon the death of the Trustor, the balance of the principal and undistributed net income of the trust estate would be distributed to the Foundation or such other foundation established by the Trustee in City.

The Trustor died on Date 2, and the Trust converted to an irrevocable trust. During Year 1 and Year 2, the Trust made various distributions to the Foundation. The distributions to the Foundation in Year 2 were claimed as deductions on the Trust's tax return for Year 1 pursuant to § 642(c)(1). However, due to an inadvertent oversight by the Trust's certified public accountant, the Trust failed to make a proper election by not including a statement with the tax return for Year 1 as required under § 1.642(c)-1(b)(3) of the Income Tax Regulations.

Law and Analysis

Section 642(c)(1) 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)).

Section 642(c)(1) allows the trustee or administrator to make an election regarding the timing of the deduction. Pursuant to § 642(c)(1), 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. 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 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 642(c)(1)(A) states that the election shall be made at such time and in such manner as the Secretary prescribes by regulations. 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 further 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 section 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 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 no 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 the term “regulatory election” as 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.

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 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. Under § 301.9100-3(a), a request for relief will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner 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(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Conclusion

Based solely upon the information submitted and the representations made, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. As a result, the Trust is granted an extension of time of sixty (60) days following the date of this letter or until the period of limitations is closed, whichever occurs earlier, to make the election under § 642(c) to claim a deduction in taxable year Year 1 for distributions made in Year 2. The election must be made on the amended return for the Trust's taxable year Year 1. The amended return must be filed with the service center where the Trust files its returns. A copy of this letter should be attached to the amended return.

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 request for rulings, it is subject to verification on examination. Except as specifically set forth above, we express no opinion concerning the federal income tax consequences of the facts or transactions described above under any other provision of the Code.

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

Sincerely,

Curtis G. Wilson
Deputy Associate Chief Counsel
(Passthroughs & Special Industries)

cc: