

The facts submitted and representations made are summarized as follows. Grantor created Trust, a revocable trust, on Date1. On Date2, Grantor died and Trust became irrevocable.

The terms of the Trust, as amended, provided that, upon the death of the Grantor, Trust assets remaining in the trust estate after satisfying other trust distribution requirements, would be distributed to a charitable entity designated by Grantor during Grantor's life, provided such entity was an organization described in §§ 170(c) and 2055(a) of the Code and qualified as an organization to which donations may be made that are deductible for federal income and estate tax purposes. The terms of Trust also provided that the Trustee would incorporate or cause to be incorporated a not-for-profit corporation, organized and to be operated exclusively for charitable purposes, within the meaning of §§ 501(c)(3) and 2055(a) to be known as Foundation. The Trust contributed approximately \$ to Foundation in Year2.

Due to an inadvertent oversight by the Trust's accountant, Trust's tax returns were filed late and Trust could not therefore make a proper § 642(c) election by including a statement with the tax return for Year1 as required under § 1.642(c)-1(b)(3) of the Income Tax Regulations.

Section 642(c) provides that, in the case of an estate or trust, 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(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 trust for which the fiduciary is acting, (iii) indicates that the fiduciary is making an election under § 642(c) 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 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.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make the election. 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. Under § 301.9100-3, a request for relief will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that (1) the taxpayer acted reasonably and in good faith, and (2) granting relief will not prejudice the interests of the government.

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 60 days from the date of this letter to file an election under § 642(c) to claim a deduction in Trust’s Year1 taxable year for distributions of gross income to Foundation made in Year2. The election must be made on the amended return for the Trust’s Year1 taxable year. The amended return must be filed within the 60 day period with the service center where Trust files its returns. A copy of this letter should be attached to the amended return.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, we express or imply no opinion as to how much of \$ constitutes gross income deductible under § 642(c).

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 X's authorized representative.

Sincerely,

Curt G. Wilson
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes

cc: