

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

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Date:

June 20, 2001

Trust =

Trustee =

Foundation=

A =

Trust
company =

D1 =

D2 =

D3 =

D4 =

D5 =

Year 1 =

Year 2 =

Y =

Chief, Planning and Special
Programs =

Dear _____ :

This letter responds to your letter dated February 16, 2001, and subsequent correspondence, written on behalf of Trust, requesting that the Service grant Trust an extension of time to make an election under § 642(c)(1) for the Trust's taxable year ending D2.

The information submitted states as follows. Trust was established on D1. Following Trust's establishment, Trust company was hired to administer Trust, including holding Trust's assets, assisting in investing Trust's property, maintaining all of Trust's books and records, preparing Trust's financial statements and preparing Trust's federal fiduciary income tax returns.

For the year ending D2, Trust paid \$y to Foundation, a qualified 170(c) Foundation. Trust paid the charitable contribution in D3, after Trust's Year 1 tax year concluded and its income could be calculated. Trust filed a Form 1041, U.S. Income Tax Return for Estates and Trusts, which treated the contribution as a distribution of income to a beneficiary and treated the contribution as an income distribution deduction. The return attached a Schedule K-1, naming Foundation as a beneficiary and listing the amount of the contribution.

In D4, upon realizing that the contribution should have been treated as a charitable contribution pursuant to § 642(c)(1), A, an employee of Trust company, prepared an amended Form 1041. On the Amended Return, the contribution was shown on Schedule A and on line 13 as a charitable deduction. The Amended Return did not include an effective election as required by § 1.642(c)-1(b)(3).

On D5, the Service notified Trust that Year 2's tax return would be audited. While reviewing Year 1's tax return in preparation for the audit, A discovered that an effective election had not been filed for Trust.

Section 642(c)(1) of the Code provides that in the case of an estate or trust, there shall be allowed as a deduction in computing its taxable income 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). If a charitable contribution is paid after the close of such taxable year and on or before the last day of the taxable 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 regulation.

Section 1.642(c)-1(b)(2) of the Income Tax Regulations provides that the election under section 642(c)(1) shall be made not later than the time, including extensions thereof, prescribed by law for filing the federal 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 (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. Section 301.9100-1(b) defines a 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 rules governing automatic extensions of time for making certain elections.

Section 301.9100-3 sets forth 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 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 to make an election under 642(c)(1) for the Trust's taxable year ending D2. The election must be made on the amended returns for Trust's taxable year ending D2. The amended returns must be filed within the sixty day period beginning with the date of this

letter with the Service Center where the return for Trust's taxable year ending D2, was filed. Copies of amended returns must be filed with the Chief, Planning and Special Programs. A copy of this letter should be attached to the 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 including whether Trust was entitled to § 642(c)(1) deductions.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code 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 Trust.

Sincerely yours,
Paul F. Kugler
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures: 2
Copy of this letter
Copy for § 6110 purposes