



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

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INTERNAL REVENUE SERVICE NATIONAL OFFICE FIELD SERVICE ADVICE

MEMORANDUM FOR

FROM: Paul F. Kugler
Associate Chief Counsel (Passthroughs and Special Industries)
CC:PSI

SUBJECT:

This Chief Counsel Advice responds to your memorandum dated June 28, 2001. In accordance with I.R.C. § 6110(k)(3), this Chief Counsel Advice should not be cited as precedent.

LEGEND

A =
B =
Year 1 =
Year 2 =

ISSUES

- (1) Whether A's ownership in certain real property was an interest in a partnership for federal income tax purposes?
- (2) Whether the taxpayer was entitled to elect to increase the basis in the real property owned as a result of the death of A's wife in Year 1?

CONCLUSIONS

- (1) A's interest in the real property in issue is an interest in partnership for federal tax purposes.
- (2) Although an election under § 754 of the Internal Revenue Code was not timely filed pursuant to the requirements of § 1.754-1(b) of the Income Tax Regulations

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for the partnerships in issue, the taxpayer may seek relief from the National Office under § 301.9100 of the Procedure and Administration Regulations.

FACTS

A has interests in numerous properties. The properties have been reflected as owned by partnerships on partnership returns filed for six separate partnerships.

A's spouse died in Year 1. The partnerships did not file an election under § 754 to adjust the basis of the property owned by the partnerships. The return preparer for A in preparing A's return for Year 2 stepped up the basis in the properties owned by the six partnerships. No § 754 election was filed and relief for a late filed § 754 election was not granted for any of the partnerships.

LAW AND ANALYSIS

Section 761 provides that the term "partnership" includes a syndicate, group, pool, joint venture or other unincorporated organization through or by means of which any business, financial operation, or venture is carried on, and which is not a corporation or a trust or estate.

Whether, considering all the facts, the parties in good faith and acting with a business purpose intended to join together in the conduct of a business as partners is referred to as the "intent test". See Commissioner v. Culbertson, 337 U.S. 733 (1949).

Based on the information provided we believe that the conduct of the parties including the filing of the partnership returns for the six partnerships reflects the intent of the parties to form a partnership for federal tax purposes.

Section 301.9100-1(c) provides, in part, that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in § 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.

Based on our review of the facts we believe the taxpayer is eligible to request relief under § 301.9100 for the failure to timely file the election under § 754 for the six partnerships in issue.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS

A copy of a letter ruling issued to another taxpayer in which relief was granted to a taxpayer for the failure to timely file a § 754 election was provided to [REDACTED] of

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your office. We believe the standards set forth therein are applicable to the facts provided to us in your request for field service advice.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

Please call if you have any further questions.

Paul F. Kugler
Associate Chief Counsel
(Passthroughs and Special Industries)
By: JEANNE M. SULLIVAN
Acting Senior Technician Reviewer
CC:PSI:2