

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:2-PLR-141487-02
Date:
November 1, 2002

Partnership =

A =

B =

C =

D =

E =

F =

D1 =

Year =

Dear :

This responds to a letter dated July 25, 2002, submitted on Partnership's behalf, requesting an extension of time to make an election under § 754 of the Internal Revenue Code.

Facts

A and B each own 49.5% of Partnership, and C owns the remaining 1%. A is a subsidiary of D and B is a subsidiary of E. On D1, E purchased the stock of B from F in a transaction in which E and F jointly filed a § 338(h)(10) election. Partnership included an election under § 754 with its return for the Year taxable year, and the return was filed

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as though the § 754 election had been made; however, the election was not properly executed.

Partnership represents that it has acted reasonably and in good faith, that granting relief will not prejudice the interests of the government, and that it is not using hindsight in making the election.

Law and Analysis

Section 754 provides that a partnership may elect to adjust the basis of partnership property in the case of a distribution of property or in the case of a transfer of a partnership interest. The election applies with respect to all distributions of property by the partnership and to all transfers of interests in the partnership during the taxable year with respect to which such election is filed and all subsequent taxable years.

Section 1.754-1(b) of the Income Tax Regulations provides that an election under § 754 and this section to adjust the basis of partnership property under §§ 734(b) and 743(b), with respect to a distribution of property to a partner or a transfer of an interest in a partnership, shall be made in a written statement filed with the partnership return for the tax year during which the distribution or transfer occurs. For the election to be valid, the return must be filed no later than the time prescribed by § 1.6031(a)-1(e) (including extensions thereof) for filing the return for that tax year.

Under § 301.9100-1(c) of the Procedure and Administration Regulations, the Commissioner may grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than six 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 an election whose deadline 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 301.9100-2 and 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election.

Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interest of the government.

Conclusion

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In this case, based on the information submitted and the representations made, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been met. Consequently, Partnership is granted an extension of time for making the § 754 election until sixty (60) days following the date of this letter. The election should be made in a written statement filed with the applicable service center, for association with Partnership's return for the Year taxable year. A copy of this letter should be attached to the statement filed.

Except as specially set forth above, we express no opinion concerning the federal income tax consequences of the transactions described above under any other provision of the Code. Specifically, we express no opinion as to whether or not Partnership is a partnership for tax purposes.

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 the power of attorney on file with this office, copies of this letter will be sent to Partnership's authorized representatives.

Sincerely,
Heather C. Maloy
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures:

Copy of this letter
Copy for 6110 purposes