

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

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Date:

March 26, 2003

LEGEND

X =

Y =

A =

B =

C =

d1 =

d2 =

d3 =

d4 =

d5 =

d6 =

State =

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Dear _____ :

This letter responds to a letter dated August 30, 2002, requesting a ruling under § 301.9100-3(a) of the Procedure and Administration Regulations that X be granted an extension of time to make an election under § 754 of the Internal Revenue Code for the period ending d1.

FACTS

The following description represents the facts as provided by X.

X is a family limited partnership organized under the laws of State. On d2, C, the general partner and majority limited partner of X, died. Following the administration of C's estate in d3, the beneficiaries of C's estate, A and B, each received equal shares of C's interest in X.

X timely filed its income tax return for the taxable year ending d1. X relied on Y to provide X with tax advice. Y failed to advise X as to the availability of an election under § 754. In d4, X sold a portion of its assets that consisted primarily of stocks and other marketable securities.

X became aware of its failure to make an election under § 754 in d5. X submitted a ruling request on d6, for relief under §§ 301.9100-1 and 301-9100-3 requesting an extension of time to adjust the basis of its assets, other than those disposed of in d4.

LAW AND ANALYSIS

Section 743(b) provides in the case of a transfer of an interest in a partnership by sale or exchange or upon the death of a partner, a partnership, with respect to which an election provided in § 754 is in effect will increase the adjusted basis of the partnership property by the excess of the basis to the transferee partner of his interest in the partnership over his proportionate share of the adjusted basis of the partnership property. Section 743(b) further provides that such increase shall constitute an adjustment to the basis of partnership property with respect to the transferee partner only.

Section 754 provides that if a partnership files an election, in accordance with the regulations prescribed by the Secretary, the basis of partnership property is adjusted, in the case of a transfer of a partnership interest, in the manner provided in § 743.

Section 1.754-1(b) provides that an election under § 754 and § 1.754-1 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 taxable year during which the distribution or transfer occurs. For the election to be valid, the return must be filed not later than the time prescribed by § 1.6031-1(e) (including extensions thereof) for filing the return for that taxable year.

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Section 301.9100-1(a) provides that the regulations under § 301.9100-2 and § 301.9100-3 provide standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election under this section. Section 301.9100-1(a) further provides that § 301.9100-3 provides extensions of time for making regulatory elections that do not meet the requirements of § 301.9100-2. Section 301.9100-1(b) provides that a regulatory election includes an election whose due date is prescribed by a regulation published in the Federal Register.

Section 301.9100-3(a) provides that requests for relief subject to § 301.9100-3 will be granted when the taxpayer provides evidence (including affidavits described in § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government. Section 301.9100-3(b)(1) provides that a taxpayer will be deemed to have acted reasonably and in good faith if the taxpayer requests relief under § 301.9100-3 before the failure to make the regulatory election is discovered by the Internal Revenue Service.

Section 301.9100-3(b)(1) further 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.

Section 301.9100-3(b)(2) provides that a taxpayer will not be considered to have reasonably relied on a qualified tax professional if the taxpayer knew or should have known that the professional was not competent to render advice on the regulatory election or was not aware of all the facts.

Section 301.9100-3(b)(3) provides that a taxpayer is deemed not to have acted reasonably and in good faith if the taxpayer: (i) seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under § 6662 at the time the taxpayer requests relief (taking into account any qualified amended return filed within the meaning of § 1.6664-2(c)(3)); (ii) was informed in all material respects of the required election and related tax consequences, but chose not to file the election; or (iii) uses hindsight in requesting relief.

Section 301.9100-3(c)(1) provides that the Commissioner will grant a reasonable extension of time to make a regulatory election only when the interests of the government will not be prejudiced by granting relief.

CONCLUSION

Based on the facts submitted and representations made, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. Accordingly, X is granted an extension of 60 days from the date of this letter to make an election under § 754 to adjust the basis of the partnership property. The relief to make a § 754 election to adjust the basis of the partnership property does not apply to any stock sold during the d4 taxable year. A copy of this letter should be attached to the § 754 election. A copy is included for that purpose.

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Except as specifically set forth above, we express or imply no opinion concerning the federal tax consequences of the facts described above under any other provision of the Internal Revenue Code.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to the taxpayer.

Sincerely,

Heather C. Maloy
Associate Chief Counsel
Passthroughs and Special Industries

Enclosures (2)

A copy of this Letter

A copy for § 6110 purposes