

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:Br.1-PLR-106615-03

Date:

May 29 2003

LEGEND:

X =

A =

Estate =

a% =

D1 =

D2 =

Dear :

This letter responds to your representative's letter dated January 24, 2003, submitted on behalf of X, requesting an extension of time under section 301.9100-3 of the Procedure and Administration Regulations for X to elect under section 754 of the Internal Revenue Code to adjust the basis of partnership property.

FACTS

According to the information submitted, A owned a a% interest in X, a limited liability company treated as a partnership for federal tax purposes. A died on D1, and A's interest in X passed under will to Estate. X intended to file a section 754 election with its tax return for the taxable year ending D2. However, X inadvertently failed to file

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the section 754 election with its return. X seeks relief under sections 301.9100-1 and 301.9100-3 for the late election.

LAW AND ANALYSIS

Under section 754, a partnership may elect to adjust the basis of partnership property where there is a distribution of property or a transfer of a partnership interest. The election applies to all distributions of property by the partnership and to all transfers of interests in the partnership during the taxable year that the election applies and all subsequent taxable years.

Section 1.754-1(b) of the Income Tax Regulations provides that an election under section 754 is 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 no later than the time for filing for the taxable year, including extensions.

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 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 section 301.9100-2. Requests for relief under section 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

Based on the information submitted and representations made, we conclude that the requirements of sections 301.9100-1 and 301.9100-3 have been satisfied. As a result, X is granted an extension of time for making the section 754 election until 60 days following the date of this letter. X should make the election by filing an amended return with the applicable service center for the taxable year ending D2 with a properly completed section 754 election attached. A copy of this letter should be attached to the statement filed.

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Except as specifically 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 X is a partnership for tax purposes.

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

Pursuant to the Power of Attorney on file with this office, a copy of this letter is being sent to the taxpayer's authorized representative.

Sincerely,

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

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

cc: