

Internal Revenue Service

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Person To Contact:

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CC:PSI:3 PLR-171527-03

Date:

April 21, 2004

LEGEND

X =

D =

c =

d1 =

d2 =

State =

Dear :

This letter responds to a letter dated December 16, 2003, and subsequent correspondence, 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.

FACTS

X is a family limited liability company organized under the laws of State. X is treated as a partnership for federal tax purposes. On d1, D, the owner of a c interest in X died. X filed its partnership return for the year of D's death without a § 754 election,

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having relied on a professional tax return preparer who inadvertently failed to advise X as to the availability and benefits of the election.

LAW AND ANALYSIS

Section 754 provides that, if a partnership files an election, in accordance with regulations prescribed by the Secretary, the basis of partnership property shall be adjusted, in the case of a distribution of property, in the manner provided in § 734 and, in the case of a transfer of a partnership interest, in the manner provided in § 743. Such an election shall apply with respect to all distributions of property by the partnership and to all transfers of interests in the partnership during the tax year with respect to which the election was filed and all subsequent tax years.

Section 1.754-1(b) of the Income Tax Regulations 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 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), 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.

Sections 301.9100-1 through 301.9100-3 provide standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-1(a).

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.

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)(v) provides that, subject to § 301.9100-3(b)(3)(i) through (iii), 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

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employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

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. As a result, X is granted an extension of time of 60 days from the date of this letter for electing under § 754 to adjust the basis of its partnership property. X should make the election by filing an amended return with the applicable service center for the tax year ending d2 with a properly completed § 754 election attached. A copy of this letter should be attached to the § 754 election. A copy is included for that purpose.

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) 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 X's authorized representative.

Sincerely,

/s/

Heather C. Maloy
Associate Chief Counsel
Passthroughs and Special Industries

Enclosures (2)

A copy of this letter

A copy for § 6110 purposes

cc: