

Internal Revenue Service

Number: **200450011**

Release Date: 12/10/04

Index Number: 9100.15-00, 754.02-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:3

PLR-113703-04

Date:

August 23, 2004

LEGEND

X =

A =

D1 =

Dear :

This letter responds to a letter dated March 3, 2004, and subsequent correspondence written by X's authorized representative, requesting an extension of time under § 301.9100 of the Procedure and Administration Regulations for X to file an election under § 754 of the Internal Revenue Code.

FACTS

According to the information submitted, X is a limited liability company taxed as a partnership. A, a partner in X, died on D1. X's partnership return for the year A died was timely filed, but due to inadvertence, a § 754 election to adjust the basis of partnership property was not filed with the return.

LAW AND ANALYSIS

Under § 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 § 754 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, 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 prescribed by § 1.6031-1(e) for filing the return for that year, including extensions. The statement required shall (i) set forth the name and address of the partnership making the election, (ii) be signed by any one of the partners, and (iii) contain a declaration that the partnership elects under § 754 to apply the provisions of § 734(b) and § 743(b).

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, if the taxpayer demonstrates to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting the relief will not prejudice the interests of the government. Section 301.9100-1(b) provides that the term "regulatory election" includes an election whose deadline is prescribed by a regulation published in the Federal Register.

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 interests of the government.

CONCLUSIONS

Based on the information submitted and the 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 sixty (60) days following the date of this letter to make a § 754 election. The election should be made in a written statement filed with the applicable service center for association with X's return. A copy of this letter should be attached to the statement filed. A copy of this letter is enclosed for that purpose.

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

Pursuant to a power of attorney on file with this office, a copy of this letter will be sent to X's authorized representative.

Sincerely,

/s/

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