

Internal Revenue Service

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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;B03

PLR-102422-04

Date: December 22, 2005

In Re:

X =

State =

Date 1 =

Date 2 =

A =

Dear :

We received your letter dated December 22, 2003, and subsequent correspondence, submitted on behalf of X, requesting relief under §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations for an extension of time in which to make an election under § 754 of the Internal Revenue Code. This responds to your request.

Facts

X is a limited liability company formed under the laws of State on Date 1. On Date 2, A purchased 80 percent of X. A's purchase of 80 percent of X resulted in a termination of X under § 708(b)(1)(B). As evidenced by provisions in X's operating agreement, the parties involved intended that a § 754 election be made upon the sales transaction. However, X's tax advisor failed to inform X of the consequences of a termination of X under § 708(b)(1)(B), including, the need for a short year return. Consequently, the § 754 election was not filed timely.

It is represented that X acted reasonably and in good faith, that granting relief will not prejudice the interests of the government, and that X is not using hindsight in requesting relief to make the election.

Law and Analysis

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. 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 taxable year with respect to which the election was filed and all subsequent taxable years. A transfer of an interest in a partnership on the death of a partner is eligible for the § 754 election. The value of the partnership interest reported on the estate tax return (including discounts) is the value used to determine the basis of the partnership interest and the adjustment to basis of partnership property under §§ 743(b) and 754. See generally, § 1.1014-3.

Section 1.754-1(b) of the Income Tax Regulations provides that an election under § 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.

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. 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 interests of the government.

Conclusion

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 effective Date 2. The election should be made in a written statement filed with the applicable service center for association with X's tax 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 income tax consequences of the transactions described above under any other provision of the Code. Specifically, we express or imply no opinion as to whether X is a partnership for federal tax purposes.

Under a power of attorney on file with this office, we are sending a copy of this letter to the taxpayer.

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.

Sincerely,

/s/

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

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

cc: