

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **200626003**

Release Date: 6/30/2006

Index Number: 754.02-00, 9100.15-00

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Refer Reply To:

CC:PSI:2 – PLR-116335-05

Date:

February 28, 2006

Legend

LLC =

A =

B =

C =

D =

Date 1 =

Date 2 =

Date 3 =

Dear

This responds to a letter, dated February 22, 2005, together with subsequent correspondence requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election under § 754 of the Internal Revenue

Code.

FACTS

The information submitted states that in Date 1, A transferred a $\frac{1}{4}$ interest in certain real estate to A's children, B, C and D, but retained the right to 100 percent of the income from the property. On Date 2, A, B, C and D transferred their interests in the real estate to LLC in exchange for a 25 percent interest in LLC. LLC is a limited liability company that is treated as a partnership for federal tax purposes. A retained the right to receive 100 percent of the income attributable to the real estate. A died on Date 3 and A's estate, pursuant to A's will, distributed A's 25% interest in LLC to B, C, and D. LLC's partnership return was timely filed, but a § 754 election to adjust the basis of partnership property was not filed with the return. The stated reason was that, although LLC and its partners were aware of the election, the benefit it provided did not outweigh the complexity of creating multiple bases. Afterwards, A's estate was audited. The examiners determined that pursuant to § 2036, the real estate transferred by A, B, C, and D to LLC, with respect to which A retained the right to receive the income, was fully includible in A's gross estate. After this determination was made, the taxpayer requested permission to make a late § 754 election.

LAW AND ANALYSIS

Pursuant to § 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 with respect to which the election was filed and all subsequent years.

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.

Section 1014(a)(1) provides that the basis of property in the hands of a person acquiring the property from a decedent or to whom the property passed from a decedent shall, if not sold, exchanged, or otherwise disposed of before the decedent's death by such person, be the fair market value of the property at the date of the decedent's death.

Section 1014(b)(9) provides that for purposes of § 1014(a), property shall be considered to have been acquired from or to have passed from a decedent if, in the case of decedents dying after December 31, 1953, property is acquired from the

decedent by reason of death, form of ownership, or other conditions (including property acquired through the exercise or non-exercise of a power of appointment), and by reason thereof the property is required to be included in determining the value of the decedent's gross estate under chapter 11 of subtitle B.

Section 2036(a)(1) provides that the value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death the possession or enjoyment of, or the right to the income from, the property.

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 including an election whose deadline is prescribed by a regulations published in the Federal Register.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election. Section 301.9100-1(a). Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions for 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 that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government. Section 301.9100-3(a).

Section 301.9100-3(b)(3)(iii) provides that the taxpayer is deemed to have not acted reasonably and in good faith if the taxpayer uses hindsight in requesting relief.

CONCLUSION

Based solely upon the information submitted and the representations made, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have not been satisfied. Therefore, LLC is not granted an extension of time to file a § 754 election.

Pursuant to § 1014, LLC may adjust its bases in the real estate it holds that was included in A's gross estate under § 2036 to reflect the value of the property that was included in A's gross estate.

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 LLC is a partnership for federal tax purposes.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Code.

This ruling is directed only to the taxpayer(s) 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 is being sent to LLC's authorized representative.

Sincerely yours,

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

Enclosures: 2

Copy of this letter

Copy for section 6110 purposes