

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201438008**
Release Date: 9/19/2014

Third Party Communication: None
Date of Communication: Not Applicable

Index Number: 9100.00-00, 754.00-00,
9100.15-00

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:03
PLR-127106-13

Date:
April 30, 2014

LEGEND

X =

Y =

Z =

State =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Date 1 =

Date 2 =

Dear :

This letter responds to a letter dated June 17, 2013, and subsequent correspondence, submitted on behalf of X by X's authorized representative, 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

X was formed as a limited liability company under State law in Year 1. X is treated as a partnership for federal tax purposes and has two partners, Y and Z. X sold nondepreciable property in Year 2, Year 3, and Year 4. Also in Year 2, Year 3, and Year 4, X made distributions to Y in excess of the adjusted basis of Y's interest in X. X relied on its tax advisors when preparing returns for those years, and the advisors did not inform X as to the availability of an election under § 754. Therefore, X did not make an election for the taxable year ending on Date 1.

In Date 2, X became aware of its failure to make an election under § 754. X now requests an extension of time under §§ 301.9100-1 and 301.9100-3 to make a § 754 election to adjust the basis of its property.

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 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 taxable year with respect to which the election was filed 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 not later than the time prescribed by § 1.6031-1(e) (including extensions thereof) for filing the return for that taxable 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.

Section 301.9100-1(b) defines the term “regulatory election” as including an election whose deadline is prescribed by a regulation 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 301.9100-2 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 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 facts 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 120 days from the date of this letter to make an election under § 754, effective for the taxable year ending on Date 1 and thereafter. The election should be made in a written statement filed with the appropriate service center for association with X's return for its taxable year ending on Date 1. A copy of this letter should be attached to the § 754 election.

X must calculate the adjustments under § 734(b) and (c), and § 1.755-1(c), as if X had timely made the § 754 election and allocated the increase in basis among the properties held by X at that time. If the statutory period of limitation on assessment or filing a claim for refund has expired for any year subject to this grant of late relief, then and as a condition of this late relief, Y and Z must reduce their respective bases of their interests in X to reflect any basis adjustments under § 734 that would have been allocated under § 755 to any properties sold in such years as if the § 754 election had been timely made, in the same proportion in which Y and Z would have shared gain from the sale of those properties.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express or imply no opinion as to whether X is a partnership for federal tax purposes.

Pursuant to a power of attorney on file with this office, we are sending a copy of this letter to X's authorized representative.

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.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the ruling request, it is subject to verification on examination.

Sincerely,

Associate Chief Counsel
(Passthroughs & Special Industries)

By: _____
Holly Porter
Branch Chief, Branch 3
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

cc: