

## Internal Revenue Service

Number: **201638009**  
Release Date: 9/16/2016  
Index Number: 9100.15-00

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:03  
PLR-105597-16

Date:  
June 13, 2016

X =

A =

Trust =

State =

D1 =

D2 =

Dear :

This responds to a letter dated February 4, 2016, and subsequent correspondence, submitted on behalf of X, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to make an election under § 754 of the Internal Revenue Code (Code).

### FACTS

The information submitted states that X was an entity organized in State that was classified as a partnership for US federal tax purposes. On D1, A, an owner of X, died. A's interest in X first flowed to A's estate and later to Trust. This transfer of A's interest in X was an event for which X could have made an election under § 754 effective its taxable year ending on D2. However, at that time, X's tax advisors neither advised X of the availability to make an election under § 754 nor made the election when preparing the relevant tax return. Accordingly, X inadvertently failed to timely file a § 754 election for the taxable year ending D2.

X represents that it has acted reasonably and in good faith, that granting relief will not prejudice the interests of the government, and that it is not using hindsight in making the election.

LAW

Section 743(b) provides, in pertinent part, that, in the case of a transfer of an interest in a partnership by sale or exchange or upon the death of a partner, a partnership, with respect to which an election provided in § 754 is in effect, will increase the adjusted basis of the partnership property by the excess of the basis to the transferee partner of his interest in the partnership over his proportionate share of the adjusted basis of the partnership property, or decrease the adjusted basis of the partnership property by the excess of the transferee partner's proportionate share of the adjusted basis of the partnership property over the basis of his interest in the partnership. Section 743(b) further provides that such increase or decrease shall constitute an adjustment to the basis of partnership property with respect to the transferee partner only.

Section 754 provides, in part, that if a partnership files an election, in accordance with the regulations prescribed by the Secretary, the basis of the 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.

Section 1.754-1(b)(1) of the Income Tax Regulations provides, in part, that an election under § 754 to adjust the basis of partnership property under 743(b) with respect to a transfer of an interest in a partnership, shall be made in a written statement filed with the partnership return for the taxable year during which the 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 the taxable year.

Section 301.9100-1(c) provides that the Commissioner may grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than 6 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 due date 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 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make the election. Section 301.9100-2 provides the rules governing automatic extensions of time for making certain elections. Section 301.9100-3 provides the standards the Commissioner will use to determine whether to grant an extension of time for regulatory elections that do not meet the requirements of § 301.9100-2. Under § 301.9100-3, a request for relief 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 (1) the taxpayer acted reasonably and in good faith, and (2) the grant of relief will not prejudice the interests of the government.

## CONCLUSION

Based solely 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 120 days from the date of this letter to make an election under § 754 effective for its taxable year ending on D2 and thereafter. A copy of this letter should be attached to the election.

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 and as a condition of this late relief, X must adjust the basis of property to reflect any additional depreciation that would have been allowable under § 743(b) if the § 754 election had been timely made. Any depreciation deduction allowable for an open year, is to be computed based upon the remaining useful life and using property basis as adjusted by the greater of any depreciation deduction allowed or allowable in any prior year had the § 754 election been timely made.

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 and the regulations thereunder.

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. This 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.

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

Sincerely,

Associate Chief Counsel  
(Passthroughs and Special Industries)

By: \_\_\_\_\_  
Richard T. Probst  
Senior Technician Reviewer, Branch 3  
Office of Associate Chief Counsel  
(Passthroughs & Special Industries)

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

cc: