

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:01
PLR-113306-21

Date:
December 17, 2021

Legend

Company =

State =

A =

Date 1 =

Date 2 =

Year =

Dear :

This letter responds to a letter dated June 3, 2021, submitted on behalf of Company by its authorized representative, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election under section 754 of the Internal Revenue Code (“Code”).

Facts

The information submitted states that Company was organized as a limited liability company under the laws of State on Date 1. Company is classified as a partnership for

Federal tax purposes. A held a partnership interest in Company when A died on Date 2. Company represents that Company's tax return for Year was timely filed, but a valid section 754 election to adjust the basis of partnership property was inadvertently not filed with the return.

Law

Section 754 provides, in part, 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 section 734, and, in the case of a transfer of a partnership interest, in the manner provided in section 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 section 754 to adjust the basis of partnership property under sections 734(b) and 743(b) with respect to a distribution of property to a partner or 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 distribution or transfer occurs. For the election to be valid, the return must be filed not later than the time prescribed by § 1.6031(a)-1(e) (including extensions thereof) for filing the return for the taxable year.

Section 301.9100-1(c) of the Procedure and Administration Regulations 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 an 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, Company is granted an extension of time of 120 days from the date of this letter to make an election under section 754 effective for its Year taxable year and thereafter. The election should be made in a written statement filed with the appropriate service center for association with Company's Year return. A copy of this letter should be attached to the statement filed.

This ruling is contingent on Company filing all required returns and adjusting the basis of its properties to reflect any section 734(b) or section 743(b) adjustments that would have been made if the section 754 election had been timely made. These basis adjustments must reflect any additional depreciation that would have been allowable if the section 754 election had been timely made, regardless of whether 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. 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 section 754 election been timely made. Additionally, the partners of Company must adjust the basis of their interests in Company to reflect what that basis would be if the section 754 election had been timely made, regardless of whether 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. Specifically, the partners of Company must reduce the basis of their interests in Company in the amount of any additional depreciation that would have been allowable if the section 754 election had been timely made.

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.

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.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

The rulings contained in this letter are 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 request for rulings, it is subject to verification on examination.

Sincerely,

Holly Porter
Associate Chief Counsel
(Passthroughs & Special Industries)

by:

Joy C. Spies
Senior Technician Reviewer, Branch 1
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure

Copy for §6110 purposes

cc: