

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **202218019**

Release Date: 5/6/2022

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

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B01
PLR-116320-21

Date:
February 07, 2022

LEGEND

LTP =

UTP =

State =

A =

Estate =

Date 1 =

Year 1 =

Dear :

This letter responds to a letter dated August 10, 2021, and subsequent correspondence, submitted on behalf of LTP by LTP'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 (Code).

FACTS

According to the information submitted, LTP and UTP are State limited liability companies that were classified as partnerships for federal tax purposes as of Date 1. UTP owns an interest in LTP.

A owned an interest in UTP when A died on Date 1. A's interest in UTP transferred to Estate on Date 1. UTP filed a timely § 754 election to adjust the basis of partnership property for its Year 1 taxable year. However, LTP inadvertently failed to file a § 754 election.

LAW AND ANALYSIS

Section 754 provides that a partnership may elect to adjust the basis of partnership property when there is a distribution of property or a transfer of a partnership interest. An election under § 754 applies 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, must 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 § 1.6031-1(e) (including extensions) for filing the return for such taxable year.

Rev. Rul. 87-115, 1987-2 C.B. 163, provides that the optional adjustment to basis under § 754 will be available to both an upper-tier partnership (UTP) and a lower-tier partnership (LTP) when there is a sale or exchange of a partnership interest or the death of a partner in UTP, and both UTP and LTP have made an election under § 754 to adjust the basis of partnership property on a sale or exchange of a partnership interest or on the death of a partner.

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 Internal Revenue 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 that 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 rules for requesting extensions 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 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, LTP is granted an extension of time of one hundred-twenty (120) days from the date of this letter to make a § 754 election for its Year 1 taxable year. The election should be made in a written statement filed with the applicable service center for association with LPT's Year 1 tax return. A copy of this letter should be attached to the statement filed.

This ruling is contingent on LTP and its partners filing within 120 days of this letter amended returns for all open years properly reporting the consequences of the election under §754, as well as any amended returns reflecting LTP and UTP's current federal tax classification. Further, as a condition of this ruling, to the extent that LTP has not already done so, LTP must adjust the basis of its properties to reflect any §§ 734(b) or 743(b) adjustments that would have been made if the § 754 election had been timely made. These basis adjustments must reflect any additional depreciation that would have been allowable if the § 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 § 754 election been timely made.

Additionally, the partners of LTP must adjust the basis of their interests in LTP to reflect what that basis would be if the § 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 LTP must reduce the basis of their interests in LTP in the amount of any additional depreciation that would have been allowable if the § 754 election had been timely made.

Except for the specific ruling above, we express or imply no opinion concerning the federal tax consequences of the facts of this case under any other provision of the

Code or the regulations thereunder. In addition, § 301.9100-1(a) provides that the granting of an extension of time for making an election is not a determination that the taxpayer is otherwise eligible to make the election.

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 on 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 have sent a copy of this letter to your authorized representative.

Sincerely,

Holly Porter
Associate Chief Counsel
(Passthroughs & Special Industries)

By: /s/ _____
Jennifer N. Keeney
Senior Counsel, Branch 1
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure
Copy for § 6110 purpose

cc: