

**Internal Revenue Service**

Department of the Treasury  
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Telephone Number:

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Date:  
August 02, 2022

LEGEND

X =

Decedent =

n =

State =

Date1 =

Date2 =

Year =

Dear :

This letter responds to a letter dated January 14, 2022, and subsequent correspondence, submitted on behalf of X by its 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

The information submitted states that X was organized as a limited liability company under the laws of State on Date1. X is classified as a partnership for federal tax purposes.

On Date2, Decedent died owning approximately an n% interest in X through Decedent's grantor trust. In Year, pursuant to the terms of the trust, the trustee distributed the trust's interest in X to each of Decedent's children in equal shares. X represents that its partnership return for the Year taxable year was timely filed; however, a § 754 election to adjust the basis of X's property was not filed with the return because its tax advisor at the time failed to adequately advise X about the tax consequences of making the election.

## LAW AND ANALYSIS

Section 754 of the Code 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 § 734, and, in the case of a transfer of a partnership interest, in the manner provided in § 743. Such election 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, in part, 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, 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) provides that the term "regulatory election" includes an election whose due date 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 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 Year taxable year and thereafter. The election should be made in a written statement filed with the appropriate service center either (1) to be associated with X's Year partnership tax return, or (2) accompanying Form 8082, Notice of Inconsistent Treatment or Administrative Adjustment Request (AAR), and any related filings as instructed in Form 8082, as appropriate. A copy of this letter should be attached to the relevant filing.

This ruling is contingent on X's relevant filing(s) containing adjustments to the basis of X's 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 deductions for the recovery of basis related to X's property 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 deductions for the recovery of basis allowable for an open year are to be computed based on the remaining useful life or recovery period and using property basis as adjusted by the greater of any such deductions allowed or allowable in any prior year had the § 754 election been timely made.

If the partnership is required to file an AAR in order to properly amend a partnership tax return, then this ruling is also contingent on X filing Form 8082 and taking into account the adjustments as required by § 6227(b).

Additionally, the partners of X must adjust the basis of their interests in X 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 X must reduce the basis of their interests in X in the amount of any additional deductions for the recovery of basis related to X's property that would have been allowable if the § 754 election had been timely made.

