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PLR-119362-22
PLR-119363-22
PLR-119364-22
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PLR-119366-22

Date:
April 04, 2023

LEGEND

X =

LTP1 =

LTP2 =

LTP3 =

LTP4 =

GP =

State =

Decedent1 =

Decedent2 =

Date 1 =

Date 2 =

Year 1 =

Year 2 =

m =

n =

p =

Dear :

This letter responds to a letter dated October 3, 2022, submitted on behalf of X, LTP1, LTP2, LTP3, and LTP4 by their authorized representative, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file elections under § 754 of the Internal Revenue Code (the ‘Code’).

FACTS

According to the information submitted, X is a State limited partnership and LTP1, LTP2, LTP3, and LTP4 (collectively, the “lower-tier partnerships”) are State limited liability companies, all of which are classified as partnerships for federal tax purposes. GP is a State corporation that is the general partner of X. X owns an m% interest in LTP1, and an n% interest in LTP2, LTP3, and LTP4. Additionally, GP owns a p% interest in each of the lower-tier partnerships.

On Date 1 (within Year 1), Decedent1 died owning an interest in X. Subsequently, Decedent2 died on Date 2 (within Year 2) owning an interest in X.

X represents that it inadvertently failed to timely file a § 754 election to adjust the basis of partnership property for its Year 1 taxable year and thereafter. Additionally, LTP1, LTP2, LTP3, and LTP4 each represent that they inadvertently failed to timely file a § 754 election to adjust the basis of partnership property for their Year 1 taxable year and thereafter.

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, X, LTP1, LTP2, LTP3, and LTP4 are each granted an extension of time of one hundred-twenty (120) days from the date of this letter to make a § 754 election for their Year 1 taxable year and thereafter. The elections should be made in a written statement filed with the appropriate service center either (1) to be associated with: X, LTP1, LTP2,

LTP3, and LTP4's Year 1 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 filings.

This ruling is contingent on X, LTP1, LTP2, LTP3 and LTP4's relevant filings containing adjustments to the basis of X, LTP1, LTP2, LTP3, and LTP4'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, LTP1, LTP2, LTP3, and LTP4'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 X, LTP1, LTP2, LTP3 and/or LTP4 are required to file an AAR in order to properly amend a partnership tax return, then this ruling is also contingent such partnership filing Form 8082 and taking into account the adjustments as required by § 6227(b).

Additionally, the partners of X, LTP1, LTP2, LTP3, and LTP4 must adjust the basis of their interests in X, LTP1, LTP2, LTP3, and LTP4 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, LTP1, LTP2, LTP3, and/or LTP4 must reduce the basis of their interests in X, LTP1, LTP2, LTP3 and/or LTP4 in the amount of any additional deductions for the recovery of basis related to X, LTP1, LTP2, LTP3, and/or LTP4's property that would have been allowable if the § 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.

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.

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 representatives.

Sincerely,

Holly Porter
Associate Chief Counsel
(Passthroughs & Special Industries)

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

Enclosure
Copy for § 6110 purposes

cc: