

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

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Person To Contact:

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Refer Reply To:

CC:PSI:03

PLR-119741-22

Date:

April 12, 2023

LEGEND

X =

A =

B =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Dear :

This letter responds to a letter dated October 14, 2022, submitted on behalf of X by its authorized representatives, 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 organized as a limited liability company under the laws of State on Date 1 and was classified as a partnership for federal tax purposes. On Date 2 and again on Date 3, one of X's partners, B, acquired from A a portion of A's interest in X. X's tax return for its taxable year ending on Date 4 was timely filed. X intended to file a § 754 election to adjust the basis of X's property for the taxable year ending Date 4 and relied on its tax advisors to timely file the election. However, due to inadvertence, X failed to timely file a § 754 election with its return for the taxable year ending Date 4. X represents that it has acted reasonably and in good faith, and that granting relief will not prejudice the interests of the Government.

LAW

Section 754 provides, in part, 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, 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) for filing the return for such 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.

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.

Section 301.9100-3(a) provides that requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence (including affidavits described in

§ 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that 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 Date 4 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 partnership tax return for the taxable year ending Date 4, 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.

As a condition of this ruling, to the extent that X has not already done so, X 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.

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 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.

The 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.

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, we are sending a copy of this letter to X's authorized representatives.

Sincerely,

Associate Chief Counsel
(Passthroughs & Special Industries)

By:

Robert D. Alinsky
Chief, Branch 3
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure:

Copy for § 6110 purposes

cc: