

Internal Revenue Service

Number: **200445007**

Release Date: 11/5/04

Index Number: 9100.31-00

Department of the Treasury

Washington, DC 20224

[Third Party Communication:

Date of Communication: Month DD, YYYY]

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B01

PLR-112574-04

Date:

July 12, 2004

X =

A =

Trust =

D1 =

D2 =

Dear :

This letter responds to a letter dated February 16, 2004, written on behalf of X, requesting a ruling, under section 301.9100-3 of the Procedure and Administration Regulations, that X be granted an extension of time to make an election section 754 of the Internal Revenue Code.

FACTS

According to the information submitted, A owned an interest in X through Trust, a grantor trust. A died on D1. As a result of A's death, there was a deemed transfer of A's interest in X to Trust. X filed its partnership return for the taxable year ending D2, without making a section 754 election, having relied on its accountant who failed to advise X of the availability and benefits of such election. X represents that it has acted reasonably and in good faith, that granting relief will not prejudice the interest of the government, and that it is not using hindsight in making the election.

LAW AND ANALYSIS

Under section 754, a partnership may elect to adjust the basis of partnership property where there is a distribution of property or a transfer of a partnership interest. The election applies to all distributions of property by the partnership and to all transfers of interests in the partnership during the taxable year that the election applies and all subsequent taxable years.

Section 1.754-1(b) of the Income Tax Regulations provides that an election under section 754 is 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 no later than the time for filing for the taxable year, including extensions.

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 six 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 deadline 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 301.9100-2 and 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 automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of section 301.9100-2. Requests for relief under section 301.9100-3 will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interest of the government.

CONCLUSION

Based solely on the facts submitted and the representations made, we conclude that X has satisfied the requirements of section 301.9100-3. As a result, X is granted an extension of time for making the section 754 election until sixty (60) days from the date of this letter. X should make the election by filing an amended return with the applicable service center for the taxable year ending D2 with a properly completed section 754 election attached. A copy of this letter should be attached to the election.

Except as specifically set forth above, no opinion is expressed or implied concerning the federal tax consequences of the facts described above under any other provision of the Code.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to the power of attorney on file with this office a copy of this letter is being sent to the taxpayer.

Sincerely,

/s/ Heather C. Maloy

Heather C. Maloy
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)
Copy of this letter
Copy for section 6110 purposes

cc: