

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B02

PLR-148408-12

Date:

September 09, 2013

Legend

X =

Y =

M =

N =

a =

b =

c =

State1 =

State2 =

Date1 =

Date2 =

Date3 =

Date4 =

Year1 =

Dear _____ :

This responds to a letter dated November 8, 2012, and subsequent correspondence, submitted on behalf of X requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations for X to make an election under § 754 of the Internal Revenue Code.

The information submitted states that X was formed as a limited partnership under the laws of State on Date1, and is treated as a partnership for federal income tax purposes. Y is a limited liability company organized under the laws of State2 on Date1. From the date of its formation until Date2, all of the outstanding member interests of Y were owned by M and, until Date2, Y was disregarded as an entity separate from its owner for federal income tax purposes. On Date2, N purchased an a percent interest in Y, resulting in Y being classified as a partnership for federal income tax purposes. Pursuant to Rev. Rul. 99-5, 1991-1 C.B. 434, N is deemed to purchase a percent of Y's assets, and M and N are then deemed to contribute their respective interests in the assets of Y to a new partnership in exchange for ownership interests in the new partnership.

Y's only asset on Date2 was a b percent limited partner interest in X. N is deemed to have purchased a c (a x b) percent limited partner interest in X on Date2. N's deemed purchase of a c percent interest in X is a transaction for which X could have made a § 754 election, but for which it failed to timely do so.

X had engaged a tax advisor to prepare X's Form 1065 for the Year1 taxable year. X represents that the tax advisor was unaware of the deemed purchase of interests in X. Moreover, the tax advisor was unaware of X's ability to make a § 754 election with respect to the deemed purchase. Therefore the tax advisor did not advise X to make the election nor did the tax advisor make the election when preparing X's return for the Year1 taxable year. X discovered the failure to make the § 754 election after it sold and recognized gain on partnership property on Date3 and Date4.

In Rev. Rul. 99-5, Situation 1, B, who is not related to A, purchases 50% of A's ownership interest in an LLC for \$5,000. A does not contribute any portion of the \$5,000 to the LLC. A and B continue to operate the business of the LLC as co-owners of the LLC. Rev. Rul. 99-5 holds that, in this situation, the LLC, which for federal tax purposes is disregarded as an entity separate from its owner, is converted to a partnership when the new member, B, purchases an interest in the disregarded entity from the owner, A. B's purchase of 50% of A's ownership interest in the LLC is treated as the purchase of a 50% interest in each of the LLC's assets, which are treated as held directly by A for federal tax purposes. Immediately thereafter, A and B are treated as contributing their respective interests in those assets to a partnership in exchange for

ownership interests in the partnership.

Section 743(b) provides, in pertinent part, that, in the case of a transfer of an interest in a partnership by sale or exchange or upon the death of a partner, a partnership, with respect to which an election provided in § 754 is in effect, will increase the adjusted basis of the partnership property by the excess of the basis to the transferee partner of his interest in the partnership over his proportionate share of the adjusted basis of the partnership property, or decrease the adjusted basis of the partnership property by the excess of the transferee partner's proportionate share of the adjusted basis of the partnership property over the basis of his interest in the partnership. Section 743(b) further provides that such increase or decrease shall constitute an adjustment to the basis of partnership property with respect to the transferee partner only.

Section 743(c) provides that the allocation of basis among partnership properties where § 743(b) is applicable shall be made in accordance with the rules provided in § 755.

Section 754 provides that if a partnership files an election, in accordance with regulations prescribed by the Secretary, the basis of partnership property shall be 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 an election shall apply 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 such 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 § 1.6031-1(e) (including extensions thereof) 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 Internal Revenue 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 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. Under § 301.9100-3, a request for relief will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that (1) the taxpayer acted reasonably and in good faith, and (2) granting relief will not prejudice the interests of the government.

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 X's Year1 taxable year. The election should be made in a written statement filed with the appropriate service center for association with X's tax return for the Year1 taxable year. A copy of this letter should be attached to the election.

If 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 and as a condition of this late relief, X must adjust the basis of property to reflect any additional depreciation that would have been allowable under § 743(b) if the § 754 election had been timely made. 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.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Internal Revenue Code and the regulations thereunder.

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.

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.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to X's authorized representative.

Sincerely,

Associate Chief Counsel
(Passthroughs & Special Industries)

By:

Melissa C. Liquerman
Branch Chief, Branch 2
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2):

Copy of this letter
Copy for § 6110 purposes

cc: