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Person To Contact:
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Telephone Number:

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PLR-119400-15
Date:
January 7, 2016

LEGEND

X =

Y =

State =

Date1 =

Date2 =

Date3 =

Date4 =

Date5 =

Dear :

This letter responds to a letter dated June 4, 2015, submitted on behalf of Y, 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

X was formed as a limited liability company under State law in Date1 and is treated as a partnership for federal tax purposes. Y was formed as a limited liability company under State law in Date2 and was treated as a partnership for federal tax purposes. Beginning in the year ending on Date3, X and Y made liquidating distributions to a significant number of their members. X's and Y's tax advisors did not inform them as to the availability of an election under § 754. On Date4, Y merged into X, and the members of Y became members of X.

In Date5, X became aware of X's and Y's failure to make elections under § 754 effective for the year ending Date3. Y now requests an extension of time under §§ 301.9100-1 and 301.9100-3 to make a § 754 election to adjust the basis of its property for the year ending Date3.

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.

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 Code, except subtitles E, G, H, and I. Section 301.9100-1(b) defines the term "regulatory election" as including 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 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.

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 the grant of relief will not prejudice the interests of the Government.

CONCLUSION

Based solely upon 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, Y is granted an extension of time of 120 days from the date of this letter to make a § 754 election for its taxable year ending Date3 and thereafter. The election should be made in a written statement filed with the applicable service center for association with Y's return for the taxable year ending Date3. A copy of this letter should be attached to the statement filed.

As a condition of this ruling, 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 and reallocate to each member the member's proportionate share of the adjusted basis of each of X's domestic oil or gas property in accordance with the principles under § 1.613A-3(e) as if a § 754 election had been timely made, taking into account any allowed or allowable depletion deduction regardless of whether the statutory period of limitation on assessment or filing a claim for refund has expired for any year subject to the grant of late relief.

Any depletion deduction allowable for an open year is to be computed by the members of X as if a § 754 election had been timely made, taking into account any allowed or allowable depletion deduction regardless of whether the statutory period of limitation on assessment or filing a claim for refund has expired for any year subject to the grant of late relief. Additionally, members of X must adjust the bases of their interests in X to reflect what the 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 the grant of late relief. Specifically, the members of X must reduce the bases of their interests in X in the amount of any additional depletion that would have been allowed or allowable if the § 754 election had been timely made. Finally, the additional depletion deductions that would have been allowed or allowable if the § 754 election had been timely made must be taken into account in determining the members' gain under § 1254 on any disposition of § 1254 property by X.

Except as specifically ruled upon above, we express or imply no opinion concerning the tax consequences of any facts discussed or referenced in this letter.

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

In accordance with a power of attorney on file with this office, we are sending a copy of this letter ruling to your authorized representatives.

Sincerely,

Associate Chief Counsel
(Passthroughs & Special Industries)

By: _____
Mary Beth Carchia
Senior Technician Reviewer, Branch 3
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

cc: