

Internal Revenue Service

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Person To Contact:

ID No.

Telephone Number:

Refer Reply To:

CC:PSI:01

PLR-129288-17

Date:

December 08, 2017

Legend

P1 =

P2 =

State 1 =

State 2 =

Date 1 =

Date 2 =

Q =

A =

Trust =

Year =

Dear :

This letter responds to a letter dated August 29, 2017, and subsequent correspondence submitted on behalf of P2, 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

The information submitted states that P1 was formed on Date 1 under the laws of State 1 as a limited partnership classified as a partnership for federal tax purposes. P2 was formed on Date 2 under the laws of State 2 as a limited liability company classified as a partnership for federal tax purposes. P1 owns a Q% interest in P2.

A owned a limited partnership interest in P1 through Trust, a grantor trust. A died during Year. P1 and P2's return was timely filed for Year, but a § 754 election to adjust the basis of P1's property was inadvertently not filed with the return. P1 and P2 relied on its advisor to file an election under § 754, however, the advisor failed to make an election under § 754 for Year.

P1 and P2 represent that they acted reasonably and in good faith, that granting relief will not prejudice the interests of the government, and that they are not using hindsight in making the election.

LAW AND ANALYSIS

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 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.

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.

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 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 or a Rev. Rule, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

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

CONCLUSION

Based 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, P2 is granted an extension of time of 120 days from the date of this letter to make an election under § 754, effective for its Year taxable year and thereafter. The election should be made in a written statement filed with the appropriate service center for association with P2's Year tax return. A copy of this letter should be attached to the § 754 election.

Except as expressly provided herein, we express or imply no opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express or imply no opinion as to whether P2 is a partnership for federal tax purposes.

Pursuant to a power of attorney on file with this office, we are sending a copy of this letter to P2's authorized representatives.

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.

Sincerely,

David R. Haglund

David R. Haglund
Branch Chief, Branch 1
(Passthroughs & Special Industries)

Enclosures (2)
Copy of letter
Copy of letter for §6110 purposes

cc: