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Person To Contact:
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Telephone Number:

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PLR-121753-18
Date:
October 23, 2018

LEGEND

X =

Y =

Country =

Date1 =

Date2 =

Date3 =

Date4 =

a =

Dear :

This letter responds to a letter dated July 11, 2018, and subsequent correspondence, submitted on behalf of X, 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 under the laws of Country on Date1 and elected to be classified as a disregarded entity as of Date1. On Date2, X added partners and became automatically classified as a partnership. On Date3, Y became an indirect a% partner in X, and X and Y intended to make a § 754 election for X's taxable year ending Date4. However, X failed to timely file the election.

X 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.

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, X 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 Date4 and thereafter. The election should be made in a written statement filed with the applicable service center for association with X's return for the taxable year ending Date4. A copy of this letter should be attached to the statement filed.

This ruling is contingent on X and its partners filing within 120 days of this letter all required returns for all open years consistent with the requested 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.

Additionally, 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. 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. 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 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: _____
Richard T. Probst
Senior Technician Reviewer, Branch 3
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)