

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:PSI:B01  
PLR-112570-20

Date:  
November 24, 2020

LEGEND

X =

A =

B =

Date 1 =

Date 2 =

Date 3 =

Year 1 =

Year 2 =

Dear :

This letter responds to a letter dated May 21, 2020, and subsequent correspondence, submitted on behalf of X by X's authorized representative, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations for X to file an election under § 754 of the Internal Revenue Code.

### FACTS

X was formed as a limited liability company in State on Date 1. X is treated as a partnership for Federal tax purposes. A, a partner in X, died on Date 2. B, another partner in X, died on Date 3.

X relied on its tax advisor for advice. However, X inadvertently failed timely to make a § 754 election for Year 1 or Year 2. X represents that it has acted reasonably and in good faith, that granting relief will not prejudice the interests of the government, and that it is not using hindsight in making the election.

### LAW AND ANALYSIS

Section 754 provides that if a partnership files an election, in accordance with the regulations prescribed by the Secretary, the basis of partnership property is 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 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, 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(a)-1(e) (including extensions thereof) for filing the return for that 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 an election. Section 301.9100-2 provides 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 (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 that granting relief will not prejudice the interests of the government.

### CONCLUSION

Based solely upon 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 following the date of this letter to make an election under § 754 effective for Year 1. The election should be made in a written statement filed with the appropriate service center for association with X's return for its Year 1 taxable year. A copy of this letter should be attached to each § 754 election. A copy is enclosed for that purpose.

This ruling is contingent on X and X's owners filing amended returns for open years within one hundred-twenty (120) days of the date of this letter properly reporting the consequences of the election under § 754. This ruling is contingent on X adjusting 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. Any depreciation deduction allowable for an open year is to be computed based on 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, 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 expressly set forth above, we express or imply no opinion concerning the federal tax consequences of the facts discussed above under any other provision of the Code. Specifically, we express or imply no opinion as to whether or not X is a partnership for federal tax purposes. In addition, § 301.9100-1(a) provides that the granting of an extension of time for making an election is not a determination that the taxpayer is otherwise eligible to make the election.

This ruling is directed only to the taxpayer requesting 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 to your authorized representative.

Sincerely,

Holly Porter  
Associate Chief Counsel  
(Passthroughs & Special Industries)

by: Caroline Hay  
Caroline Hay  
Senior Counsel, Branch 1  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

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

cc: