

Internal Revenue Service

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Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:01
PLR-106143-21

Date:
August 25, 2021

Legend

X =

A

State =

Date 1 =

Date 2 =

Year =

Dear :

This responds to a letter dated October 4, 2021, and additional 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 to file an election under § 754 of the Internal Revenue Code (Code).

Facts

The information submitted states that X was formed on Date 1 as a State limited partnership. X was classified as a partnership for federal tax purposes. A, a partner in X, died on Date 2. X relied on its advisor to file an election under § 754; however, the advisor failed to make an election under § 754 for Year.

Law

Section 754 provides, in part, 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 under the rules set forth in §§ 301.9100-2 and 301.9100-3 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 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.

Section 301.9100-3(a) provides that 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 the 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, X 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 X's Year tax return.

This ruling is contingent on X filing all required returns and adjusting the basis of its properties to reflect any § 734(b) or § 743(b) adjustments 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 for a claim of 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 upon the remaining useful life and using property basis 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 made, regardless of whether the statutory period of limitations 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 by the amount of any additional depreciation that would have been allowable if the § 754 election had been timely made.

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 X is a partnership for federal tax purposes.

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 the appropriate party. While this office has not verified any of the material submitted in support of the ruling request, it is subject to verification or examination.

Pursuant to a power of attorney on file with this office, we are sending a copy of this letter to X'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,

Holly Porter
Associate Chief Counsel (Passthroughs and
Special Industries)

By: Caroline E. Hay
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Enclosure:
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cc: