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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
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Date:
February 7, 2023

LEGEND

X   =

Y   =

A   =

p   =

Date 1   =

Date 2   =

Date 3   =

Year   =

State   =

Dear   :

This is in response to a letter dated September 30, 2022, and supplemental
correspondence, submitted on behalf of Y by it'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.

FACTS

According to the information submitted, $\underline{X}$ was formed as a limited partnership under the laws of $\underline{State}$ on $\underline{Date\ 1}$ and is treated as a partnership for federal tax purposes. $\underline{Y}$ was formed as a general partnership under the laws of $\underline{State}$ on $\underline{Date\ 2}$ and is treated as a partnership for federal tax purposes. $\underline{X}$ owned a $\underline{p}$ percent interest in $\underline{Y}$. On $\underline{Date\ 3}$, $\underline{A}$, a partner in $\underline{X}$, died. $\underline{X}$ and $\underline{Y}$ inadvertently failed to file timely elections under § 754 for $\underline{Year}$.

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 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. 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.

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. Rev. Rul. 87-115, 1987-2 C.B. 163.

Section 1.754-1(b)(1) of the Income Tax Regulations provides, in part, 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(a)-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 Internal Revenue 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 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.

<div align="center">CONCLUSION</div>

Based solely on 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, Y is granted an extension of time of one hundred twenty (120) days from the date of this letter to make a § 754 election for Year and thereafter. The election should be made in a written statement filed with the appropriate service center either (1) to be associated with Y's Year partnership tax returns, or (2) accompanying Forms 8082, Notice of Inconsistent Treatment or Administrative Adjustment Request (AAR), and any related filings as instructed in Form 8082, as appropriate. A copy of this letter should be attached to the relevant filings.

This ruling is contingent on Y and its partners filing within 120 days of this letter amended returns for all open years properly reporting the consequences of the election under § 754. If Y is required to file AARs in order to properly amend a partnership tax return, then this ruling is contingent on Y filing the respective Form 8082 and taking into account adjustments as required by § 6227(b). Further, to the extent Y has not already done so, Y 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. 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, the partners of Y must adjust the basis of their interests in Y 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 Y must reduce the basis of their interests in Y in the amount of any additional depreciation that would have been allowable if the § 754 election had been timely made.

The ruling contained in this letter is based on information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the ruling request, it is subject to verification on examination.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. 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.

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

Sincerely,

Holly Porter
Associate Chief Counsel
(Passthroughs & Special Industries)

By:_____
Caroline E. Hay
Senior Technician Reviewer, Branch 1
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure
        Copy for § 6110 purposes

cc: