

Internal Revenue Service

Department of the Treasury
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Person To Contact:
, ID No.

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Refer Reply To:
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Date:
July 03, 2024

LEGEND

X = EIN:

A = EIN:

B = EIN:

C = EIN:

State =

N =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Dear _____ :

This letter responds to a letter dated December 15, 2023, and subsequent correspondence, submitted on behalf of X by its 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 (Code).

FACTS

According to the information submitted, X was formed as a limited liability company under the laws of State on Date 1 and is classified as a partnership for Federal income tax purposes.

X owned a single tract of real estate (Property) that contained an apartment complex (Apartment Parcel) and a vacant lot (Development Parcel). Prior to Date 3, X caused Property to be subdivided so Apartment Parcel and Development Parcel became separate tracts for real estate law purposes.

On Date 2, X amended and restated its limited liability company agreement to create separate interests with respect to Apartment Parcel (Apartment Parcel Percentage Interests) and Development Parcel (Development Parcel Percentage Interests). Under the terms of the agreement, the income, gain, loss, deduction, and credit derived from Apartment Parcel or Development Parcel, respectively, would be solely allocable to the holders of the Apartment Parcel Percentage Interests or Development Parcel Percentage Interests, respectively.

Prior to Date 3, A owned N% of both the Apartment Parcel Percentage Interests and Development Parcel Percentage Interests. On Date 3, A sold all its Apartment Parcel Percentage Interests to each of B and C, in equal shares, but retained its N% ownership of the Development Parcel Percentage Interests. Due to A's sale of all its interest in the Apartment Parcel Percentage Interests to B and C, X intended to file a § 754 election to adjust the basis of X's property for the taxable year ending Date 4, but X inadvertently failed to timely file the election with its otherwise timely filed return for the taxable year ending Date 4.

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 by sale or exchange or upon the death of a partner, 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 no 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 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 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.

Under § 301.9100-3, a request for extension of time 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 (1) the taxpayer acted reasonably and in good faith, and (2) the grant of relief will not prejudice the interests of the Government.

CONCLUSION

Based solely 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 a § 754 election for its taxable year ended Date 4. The election should be made in a written statement filed with the appropriate service center accompanying Form 1065-X, Amended Return or Administrative Adjustment Request (AAR), or Form 8082, Notice of Inconsistent Treatment or AAR, and any related filings as instructed in Form 1065-X or Form 8082, as appropriate. A copy of this letter should be attached to the relevant filing.

This ruling is contingent on X's relevant filing(s) containing adjustments to the basis of X's properties to reflect any § 734(b) or § 743(b) adjustments that would have been made if the § 754 election had been timely made. Regarding the § 743(b) adjustment relating to A's sale of its Apartment Parcel Percentage Interests to B and C, the

adjustments shall only be made to the basis of Apartment Parcel and other property the income, gain, loss, deduction, and credit from which is allocable to holders of the Apartment Parcel Percentage Interests. These basis adjustments must reflect any additional deductions for recovery of basis related to X's property 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 relief. Any deductions for the recovery of basis allowable for an open year are to be computed based on the remaining useful life or recovery period and using property basis as adjusted by the greater of any such deductions allowed or allowable in any prior year had the § 754 election been timely made.

If X is required to file an AAR to properly amend a partnership tax return, then this ruling is contingent on X filing Form 1065-X or Form 8082 and taking into account the adjustments as required by § 6227(b).

Additionally, affected partners of X must adjust the basis of their interests in X to reflect what the basis would be if the § 754 election had been timely 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 in the amount of any additional deductions for the recovery of basis related to X's property that would have been allowable if the § 754 election had been timely made.

Except for the specific ruling above, we express or imply no opinion concerning the Federal tax consequences of the facts of this case under any other provision of the Code. In addition, § 301.9100-1(a) provides that the granting of an extension of time for making an election is not a determination that a taxpayer is otherwise eligible to make the election.

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

This ruling is directed only to the taxpayers that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the power of attorney on file with this office, we are sending a copy of this letter ruling to your authorized representative.

Sincerely,

/s/

Laura C. Fields
Branch Chief, Branch 1
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure

Copy for § 6110 purposes

cc: