

Internal Revenue Service

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Person To Contact: _____, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B01
PLR-109851-24
Date:
October 30, 2024

LEGEND

LTP =

UTP =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Year 1 =

Year 2 =

Dear _____ :

This letter responds to a letter dated May 1, 2024, submitted on behalf of LTP by LTP's authorized representatives, requesting an extension of time under § 301.9100-3 of the

Procedure and Administration Regulations to file an extension under § 754 of the Internal Revenue Code (Code).

FACTS

According to the information submitted, LTP was organized under the laws of State on Date 1 and treated as a partnership for federal tax purposes. LTP became a disregarded entity of UTP on Date 2. UTP, which is treated as a partnership for federal tax purposes, distributed an interest in LTP to one of its partners on Date 3 and, as a result, LTP converted to a partnership for federal tax purposes. On Date 4, UTP's partners sold interests in UTP to new partners. UTP had made a § 754 election. However, LTP inadvertently failed to file a § 754 election to adjust basis for partnership property for its Year 1 taxable 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. 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 such 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(a)-1(e) (including extensions) for filing the return for such taxable year.

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

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 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 the rules governing 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 (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 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, LTP is granted an extension of time of one hundred-twenty (120) days from the date of this letter to make a § 754 election for its Year 1 taxable year. 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 for any related filings as instructed in Form 1065-X or Form 8082, as appropriate, for LTP's Year 2 taxable year to be associated with LTP's Year 1 tax return. A copy of this letter should be attached to the relevant filing.

This ruling is contingent on LTP's relevant filing(s) containing adjustments to the basis of LTP's 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 deductions for the recovery of basis related to LTP'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 late 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 LTP is required to file an AAR in order to properly amend a partnership tax return, then this ruling is contingent on LTP filing Form 1065-X or Form 8082 and taking into account the adjustments as required by § 6227(b).

cc: