

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

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CC:PSI:B03

PLR-112178-21

Date:

August 05, 2021

Legend

A =

B =

C =

D =

State 1 =

Date 1 =

Date 2

Date 3 =

Date 4

Year 1 =

Dear :

This responds to a letter, dated May 26, 2021, and subsequent correspondence, requesting an extension of time under § 301.9100-3 of the Procedures and Administration Regulations to file an election under § 754 of the Internal Revenue Code.

FACTS

The information submitted states that on Date 1, A was formed as a limited liability company under the laws of State 1 and is classified for federal income tax purposes as a partnership. B and C were the partners of A at the time of formation. On

Date 2, various entities (the “Sellers”) contributed assets to B which caused B to become a partnership for federal income tax purposes on Date 2. On Date 3, the Sellers sold certain of their partnership interests in B to C (the “Buyer”). Also on Date 3, the Sellers had their remaining membership interests in B redeemed by B pursuant to a purchase agreement which was signed on Date 4 (“Purchase Agreement”). Section 6.20(d) of the Purchase Agreement provided that “B shall make a Code Section 754 election with the initial federal income tax return for [B].” Under Section 6.20(a) of the Purchase Agreement, the Buyer was responsible for causing the tax returns for B and all other subsidiary entities, including A, to be filed.

A failed to make the Section 754 election for the short period in Year 1 beginning on Date 2 and ending on December 31st of Year 1. Lastly, on Date 3, the Buyer and other remaining members of B contributed their membership interests in B to D. As a result of the contributions, B became a disregarded entity of D.

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 § 1.6031-1(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) defines the term “regulatory election” as an election whose due date is prescribed by a regulation published in the Federal Register or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

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 the election.

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 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.

CONCLUSIONS

Based on the information submitted and the representations made, we conclude that the requirements of sections 301.9100 -1 and 301.9100-3 have been satisfied. As a result, A is granted an extension of time of 120 days following the date of this letter to make a section 754 election. The election should be made in a written statement filed with the applicable service center for association with A's return. A copy of this letter should be attached to the statement filed. A copy of this letter is enclosed for that purpose.

This ruling is contingent on A adjusting the basis of its properties to reflect any section 734(b) or section 743(b) adjustments that would have been made had the section 754 election been timely made. These basis adjustments must reflect any additional depreciation that would have been allowable had the section 754 election 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 election 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 allowed or allowable in any prior year had the section 754 election been timely made. Additionally, A's partners must adjust the basis of their interests in A to reflect what that basis would be had the section 754 election 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 election relief. Specifically, A's partners must reduce the basis of their interests in A in the amount of any additional depreciation that would have been allowable had the section 754 election been timely made.

Except as specifically set forth above, we express no opinion concerning the federal income tax consequences of the transactions described above under any other provision of the Code. Specifically, we express no opinion as to whether or not A 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 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.

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.

Pursuant to the Power of Attorney on file with this office, a copy of this ruling will be sent to the taxpayer representative.

Sincerely,

Associate Chief Counsel
(Passthroughs and Special Industries)

By: _____
Richard T. Probst
Senior Technician Reviewer, Branch 3
(Passthroughs & Special Industries)

Enclosures (2):

Copy of this letter

Copy of this letter for § 6110 purposes

cc: