

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

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CC:PSI:B03

PLR-122360-18

Date:

January 29, 2019

LEGEND

LTP =

UTP =

State =

D1 =

D2 =

Dear :

This letter responds to a letter dated July 19, 2018, submitted on behalf of LTP 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

According to the information submitted, LTP is a State limited liability company classified as a partnership for federal tax purposes. UTP is represented as a domestic limited partnership that has had a § 754 election in place since before LTP's formation. UTP owns an interest in LTP.

In D1, one of UTP's partners sold its interest in UTP to a new partner. LTP's tax return for the D2 taxable year was filed timely, but a § 754 election to adjust the basis of partnership property was not filed with the return. LTP represents that it has acted

reasonably and in good faith and that granting relief will not prejudice the interests of the government.

LAW AND ANALYSIS

Section 754 provides, in part, that if a partnership files an election, in accordance with regulations prescribed by the Secretary, the basis of partnership property is adjusted when there is a distribution of property or a transfer of a partnership interest. Such an election 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.

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 section 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.

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 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 automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for 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 the 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 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 120 days from the date of this letter to make a § 754 election for its D2 taxable year and thereafter. The election should be made in a written statement filed with the applicable service center for association with LTP's return for its D2 taxable year. A copy of this letter should be attached to the statement filed.

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 the taxpayer is otherwise eligible to make the election.

This ruling is directed only to the taxpayer requesting it. According to § 6110(k)(3), this ruling may not be used or cited as precedent.

Under a power of attorney on file with this office, we are sending a copy of this letter to LTP's authorized representatives.

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.

Sincerely,

Associate Chief Counsel
(Passthroughs & Special Industries)

By: /s/ Mary Beth Carchia
 Senior Technician Reviewer, Branch 3
 Office of the Associate Chief Counsel
 (Passthroughs & Special Industries)

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes

CC: