

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B1-PLR-148359-02

Date:

December 23, 2002

Legend

Partnership =

Y =

Estate =

D1 =

D2 =

State =

Dear :

This letter is in response to your request dated August 27, 2002, requesting that Partnership be granted an extension of time under §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations to make an election under § 754 of the Internal Revenue Code.

Facts

Partnership was formed under the laws of State on D1. Partnership represents that on D2, as a result of Y's death, Y's partnership interest passed to Estate. As a result of the transfer, Partnership was qualified to make a § 754 election. Partnership intended to have its accountant file a § 754 election, effective D2. However, Partnership's accountant inadvertently failed to file the § 754 election.

Partnership represents that it has acted reasonably and in good faith, that granting relief will not prejudice the interests of the government, and that it is not using hindsight in making the election.

Law and Analysis

Under § 754, a partnership may elect to adjust the basis of partnership property where there is a distribution of property or a transfer of a partnership interest. The election applies to all distributions of property by the partnership and to all transfers of interests in the partnership during the taxable year that the election applies and all subsequent taxable years.

Section 1.754-1(b) of the Income Tax Regulations provides that an election under § 754 is 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 for filing for the 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 Code, except subtitles E, G, H, and I. Section 301.9100-1(b) defines the term “regulatory election” as an election whose deadline 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 301.9100-2 and 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 making 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 to establish that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Conclusion

Based on the information submitted we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. As a result, Partnership is granted an extension of time of sixty (60) days following the date of this letter to make a § 754 election. The election should be made in a written statement filed with the applicable service center. A copy of this letter should be attached to the statement filed. A copy of this letter is enclosed for that purpose.

If 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 and as a condition of this late relief, Partnership must adjust the basis of property and Estate must adjust its basis in

Partnership to reflect any additional depreciation that would have been allowable under § 743(b) if the § 754 election had been timely made. 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.

Except as specially 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 Partnership is a partnership for tax purposes.

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, a copy of this written determination will be sent to your authorized representative.

Sincerely,

/s/ Heather C. Maloy

Heather C. Maloy
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)

Copy of this letter

Copy for 6110 purposes