

Internal Revenue Service

Department of the Treasury
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Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:03
PLR-144109-07

Date:
January 14, 2008

Legend

Taxpayer =

A =

State =

Date 1 =

Date 2 =

Year 1 =

Dear :

This letter responds to a letter dated August 28, 2007, and subsequent correspondence, submitted on behalf of Taxpayer requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations for Taxpayer to file an election under § 754 of the Internal Revenue Code.

Facts

According to the information submitted, Taxpayer is a limited liability company formed under the laws of State on Date 1. Taxpayer is treated as a partnership for federal tax purposes. A, a member of Taxpayer, died on Date 2 of Year 1. Taxpayer's accountant failed to advise Taxpayer of the desirability of making an election under

§ 754 when Taxpayer filed its partnership return for Year 1. Taxpayer represents that it has acted reasonably and in good faith, that granting relief will not prejudice the interests of the government, and that Taxpayer is not using hindsight in making the election.

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 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. A transfer of an interest in a partnership on the death of a partner is eligible for the § 754 election. The value of the partnership interest reported on the estate tax return (including discounts) is the value used to determine the basis of the partnership interest and the adjustment to basis of partnership property under §§ 743(b) and 754. See generally, § 1.1014-3.

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.

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

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 Taxpayer is a partnership for federal tax purposes.

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.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

/s/

William P. O'Shea
Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy for § 6110 purposes

cc: