

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:

, ID #

Telephone Number:

Refer Reply To:

CC:PSI:B03

PLR-114118-18

Date:

July 17, 2018

LEGEND

X =

State =

Y =

D1 =

Dear :

This letter responds to a letter dated April 23, 2018, submitted on behalf of X 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, X is a State limited liability company classified as a partnership for federal tax purposes. In D1, one of X's members transferred part of its interest in X to another member, Y. X's return for the D1 taxable year was filed timely, but a § 754 election to adjust the basis of partnership property

was not filed with the return. X 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 that a partnership may elect to adjust the basis of partnership property when there is a distribution of property or a transfer of a partnership interest. An election under § 754 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.

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, X is granted an extension of time of 120 days from the date of this letter to

make a § 754 election for its D1 taxable year and thereafter. The election should be made in a written statement filed with the applicable service center for association with X's return for its D1 taxable year. A copy of this letter should be attached to the statement filed.

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

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 X's authorized representative.

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 of this letter for section 6110 purposes