

## Internal Revenue Service

## Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B01-PLR-141509-02

Date:

Sept 25 2002

P =

A =

B =

C =

D =

E =

F =

a =

b =

c =

Date 1 =

Dear :

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This letter responds to a request submitted on behalf of P, dated July 25, 2002, seeking a written determination allowing an extension of time for P to make an election under section 754 of the Internal Revenue Code.

## FACTS

P is owned a% by A, indirectly through its subsidiary B, b% by C, indirectly through its subsidiary D, and c% by E. On Date 1, C purchased the stock of D from E in a transaction in which C and E jointly filed a section 338(h)(10) election. At that time C and E requested that P make an election in accordance with section 754 of the Code to adjust the basis of partnership property under section 743(b). When P filed its return for that taxable year it inadvertently did not include a properly executed election under section 754. However, P filed subsequent returns as though a section 754 election were in place.

P 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 section 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 section 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 section 301.9100-1(c) of the Procedure and Administration Regulations, 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.

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Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of section 301.9100-2. Requests for relief under section 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 interest of the government.

## CONCLUSION

Based on the information submitted and the representations made therein, we conclude that the requirements of sections 301.9100-1 and 301.9100-3 have been satisfied. As a result, P is granted an extension of time of sixty (60) 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. A copy of this letter should be attached to the statement filed. A copy of this letter is enclosed for that purpose.

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 P is a partnership for tax purposes.

This ruling is directed only to the taxpayer(s) 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 written determination will be sent to your authorized representatives.

Sincerely,

**/s/ Heather C. Maloy**  
Heather C. Maloy  
Associate Chief Counsel  
(Passthroughs and Special Industries)

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