

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 No.

Telephone Number:

Refer Reply To:

CC:PSI:B03

PLR-134011-18

Date:

February 05, 2019

Legend

X =

M =

N =

O =

State =

Date1 =

Date2 =

Date3 =

Date4 =

Date5 =

Dear :

This letter responds to a letter dated November 14, 2018, submitted on behalf of X requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations for X to make an election under § 754 of the Internal Revenue Code ("Code").

FACTS

According to the information submitted, X is a limited liability company formed under the laws of State on Date1 and is classified as a partnership for federal tax purposes. X began operations on Date2. X conducts its business operations through M, a limited liability company wholly-owned by X. On Date3, N and O purchased interests in X, and these purchases resulted in a technical termination of X under § 708(b)(1)(B) of the Code (as it was in effect at the time). X represents that it had made a timely election under §754 for the period beginning Date2 and ending Date3 (the period prior to the technical termination of X), but failed to make a timely election for the period beginning Date4 and ending Date5 (the period after the technical termination of X). X represents that it always intended to make the election under § 754 to be effective for the period from Date4 to Date5. X also attached a statement to its return for the period from Date4 to Date5 showing the § 743(b) basis adjustment allocated to N and O, but this statement was not signed by a partner and did not contain the election statement required by § 1.754-1(b) of the Income Tax Regulations (“regulations”). X further represents that X has acted reasonably and in good faith and that granting the requested 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 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 the period from Date4 to Date5, and thereafter. The election should be made in a written statement filed with the applicable service center for association with X's return for the period from Date4 to Date5. A copy of this letter should be attached to the statement filed.

This ruling is contingent on X and its partners filing within 120 days of this letter all required returns for all open years consistent with the requested relief. 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.

Additionally, as a condition of this ruling, to the extent that X has not already done so, X must adjust the basis of its properties to reflect any § 734(b) or 743(b) adjustments that would have been made if the § 754 election had been timely made. These basis adjustments must reflect any additional depreciation that would have been allowable if the § 754 election had 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 relief. Additionally, the partners of X must adjust the basis of their interests in X to reflect what that basis would be if the § 754 election had 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 relief. Specifically, the partners of X must reduce the basis of their interests in X in

the amount of any additional depreciation that would have been allowable if the § 754 election had 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.

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.

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.

Sincerely,

Associate Chief Counsel
(Passthroughs & Special Industries)

By:

Richard T. Probst
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: