

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

Number: **200425035**

Release Date: 6/18/04

Index Number: 754.02-00, 9100.15-00

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:2 – PLR-164094-03

Date:

February 25, 2004

Legend

X:

A:

Trust:

State:

d1:

Year 1:

Year 2:

Dear \_\_\_\_\_ :

This responds to your letter dated April 24, 2003, and subsequent correspondence submitted on behalf of X, requesting that the Service grant X an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations to make an election under § 754 of the Internal Revenue Code.

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The information submitted states that X, a State limited liability company that is treated as a partnership for federal tax purposes, was formed in Year 1. Trust was a member of X. On d1 of Year 2, A, the grantor of Trust, died. A was treated as the owner of Trust under subpart E of part I of subchapter J of Chapter 1. X represents that it intended to make a § 754 election for Year 2, but it inadvertently failed to timely file the election.

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.

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.

Section 301.9100-1(c) provides that the Commissioner may grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I. Section 301.9100-1(b) defines the term “regulatory election” as an election whose due date 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 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make the election.

Section 301.9100-2 provides the rules governing automatic extensions of time for making certain elections.

Section 301.9100-3 provides the standards the Commissioner will use to determine whether to grant an extension of time for regulatory elections that do not meet the requirements of § 301.9100-2. Under § 301.9100-3, a request for relief will be

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granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Based solely 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, X is granted an extension of time for 60 days from the date of this letter to make an election under § 754 effective Year 2, with the appropriate service center. A copy of this letter should be attached to the § 754 election. A copy is enclosed for that purpose.

As a condition for this late election relief, X, Trust, and the other members of X, must file federal income tax returns consistent with X having made a timely § 754 election effective Year 2 and thereafter.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Code.

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.

Sincerely,

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

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

cc: