

Internal Revenue Service

Department of the Treasury
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CC:PSI:3 – PLR-163530-03

Date: April 19, 2005

Taxpayer =

Partners =

A =

Date 1 =

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Date 2 =State =Year 1 =Year 2 =

Dear :

This letter responds to a letter dated September 15, 2003, requesting relief under §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations for an extension of time in which to make an election under § 754 of the Internal Revenue Code.

Facts

According to the information submitted, Taxpayer is a general partnership formed under the laws of State on Date 1. A, a partner of Taxpayer, died on Date 2. Complications in administering A's estate, including complex litigation, prevented the administrators of the estate from requesting that an election under § 754 be made when Taxpayer filed its partnership return for Year 1, which includes Date 2.

It is represented that Taxpayer 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 is made in a written statement filed with the partnership return for the

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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, including extensions.

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 evidence to establish that the taxpayer acted reasonably and in good faith, and that granting 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 applicable service center for association with Taxpayer's partnership tax return. A copy of this letter should be attached to the statement filed. A copy of this letter is enclosed for that purpose.

As a condition of this late election relief, any allowable depreciation deduction for Year 1 on property held by Taxpayer is to be computed using a property basis unadjusted under § 743(b) because of A's death. Any depreciation deduction subsequently allowable, beginning in Year 2, is to be computed based on remaining useful life and using property basis as adjusted by the greater of any depreciation deduction allowed or allowable in Year 1 had the § 754 election been timely made.

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.

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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.

Under a power of attorney on file with this office, we are sending copies of this letter to your two authorized representatives.

Sincerely,

Heather C. Maloy
Associate Chief Counsel
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

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

cc :