

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:2-PLR-122178-02

Date:

October 10, 2002

Legend

Partnership =

D1 =

Dear :

This letter responds to a , and additional correspondence, submitted on behalf of Partnership requesting that the Service grant Partnership an extension of time to make an election under § 754 of the Internal Revenue Code.

Facts

Partnership has represented the following facts. Various interests in Partnership were transferred in the taxable year ending on D1. The Partnership intended to file a § 754 election with its tax return for the taxable year ending on D1. However, Partnership's tax return for the taxable year ending D1 was inadvertently filed without a § 754 election. Nevertheless, Partnership represents that it has filed income tax returns consistent with having made an election under § 754. Partnership seeks relief under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations for the late election.

Law and Analysis

Under § 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.

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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 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.

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 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 granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that (1) the taxpayer acted reasonably and in good faith, and (2) 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. Therefore, within 60 days from the date of this letter the Partnership must file an amended return with the applicable service center for the taxable year ending D1 with a properly completed § 754 election attached. A copy of this letter should be attached to the statement filed.

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. Specifically, no opinion is expressed concerning whether Partnership is a partnership for federal tax purposes.

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This ruling is directed only to the Taxpayers who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to Partnership's authorized representatives.

Sincerely yours,

Heather C. Maloy

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

Enclosures: 2
Copy of this letter
Copy for § 6110 purposes