

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

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Telephone Number:

Refer Reply To:

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Date:

June 22, 2004

Legend

Partnership =

A =

B =

D1 =

Year 1 =

State =

Dear

This responds to a letter dated October 17, 2003, submitted on behalf of Partnership, requesting an extension of time under section 301.9100-3 of the Procedure and Administration Regulations to make an election under section 754 of the Internal Revenue Code.

FACTS

A is a partner of Partnership. A's wife, B, died on D1. Under the laws of State, a percentage of A's interest in Partnership passed to B's estate. Partnership relied on its tax advisor to provide Partnership with tax advice. Partnership's tax advisor inadvertently failed to inform Partnership of the advisability of making an election under section 754 for Year 1, the year of B's death.

Partnership 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

Section 754 provides that 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), 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 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, we conclude that the requirements of sections 301.9100-1 and 301.9100-3 have been satisfied. As a result, Partnership is granted an extension of time of sixty (60) days following the date of this letter to make a section 754 election, effective Year 1. 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.

If 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 and as a condition of this late relief, Partnership must adjust the basis of property and A must adjust A's basis in Partnership to reflect any additional depreciation that would have been allowable under section 743(b) if the section 754 election had been timely made. 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 section 754 election been timely made.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

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.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to the taxpayer.

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