

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:3-PLR-101693-02
Date:
January 24, 2003

X =

Y =

D =

d1 =

d2 =

Dear :

This letter responds to a letter dated December 14, 2001, requesting a ruling under § 301.9100-3(a) of the Procedure and Administration Regulations that X be granted an extension of time to make an election under § 754 of the Internal Revenue Code for a transfer of a partnership interest occurring in the taxable year ending d1.

FACTS

According to the information submitted, X utilized the services of Y to prepare its tax returns and provide advice on tax matters. On d2, D, the owner of a 25% partnership interest in X, died. In preparing X's tax return for the year ending d1, Y failed to advise X as to the availability of a § 754 election with respect to the transfer of D's partnership interest.

In conjunction with the preparation of the tax return for the estate of D, it was determined that a § 754 election was available. X submitted a ruling request for relief under § 301.9100-3.

LAW AND ANALYSIS

Section 754 provides that, if a partnership files an election, in accordance with regulations prescribed by the Secretary, the basis of partnership property shall be adjusted, in the case of a distribution of property, in the manner provided in § 734 and,

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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 tax year with respect to which the election was filed and all subsequent tax years.

Section 1.754-1(b) of the Income Tax Regulations provides that an election under § 754 and § 1.751-1(b) 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 tax year during which the distribution or transfer occurs. For the election to be valid, the return must be filed no later than the time prescribed by § 1.6031(a)-1(e) (including extensions thereof) for filing the return for that tax year.

Section 301.9100-1(a) provides that the regulations under § 301.9100-2 and § 301.9100-3 provide standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election under this section. Section 301.9100-1(a) further provides that § 301.9100-3 provides extensions of time for making regulatory elections that do not meet the requirements of § 301.9100-2. Section 301.9100-1(b) provides that a regulatory election includes an election whose due date is prescribed by a regulation published in the Federal Register.

Section 301.9100-3(a) provides that requests for relief subject to § 301.9100-3 will be granted when the taxpayer provides 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.

Section 301.9100-3(b)(1)(v) provides that, subject to § 301.9100-3(b)(3)(i) through (iii), a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Section 301.9100-3(b)(3) provides that a taxpayer is deemed not to have acted reasonably and in good faith if the taxpayer: (i) seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under § 6662 at the time the taxpayer requests relief (taking into account any qualified amended return filed within the meaning of § 1.6664-2(c)(3) of the Income Tax Regulations); (ii) was informed in all material respects of the required election and related tax consequences, but chose not to file the election; or (iii) uses hindsight in requesting relief.

CONCLUSION

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Based on the facts submitted and 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 60 days from the date of this letter for electing under § 754 to adjust the basis of its partnership property. Within the extension period, X must file the election with the Chief, Planning and Special Programs, Area 4, at 31 Hopkins Plaza, Room 1200, Baltimore, MD 21202, for association with X's return. A copy of this letter should be attached with the written statement. A copy is included for that purpose.

Except as specifically set forth above, we express or imply no opinion concerning the federal tax consequences of the facts described above under any other provision of the Internal Revenue Code.

The rulings contained in this letter are 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 request for rulings, it is subject to verification on examination.

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
Associate Chief Counsel
Passthroughs and Special Industries

Enclosures (2)

A copy of this letter

A copy for § 6110 purposes