

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **200439021**

Release Date: 9/24/04

Index Number: 754.02-00, 9100.15-00

Person To Contact:

Telephone Number:

Refer Reply To:

CC:PSI:2 – PLR-118046-04

Date:

May 21, 2004

Legend

LP =

A =

B =

State =

d1 =

d2 =

Year 1 =

Dear

This responds to a letter, dated March 16, 2004, submitted on behalf of LP, requesting that the Service grant LP 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.

The information submitted states that LP is a State limited partnership formed on d1. On d2 of Year 1, A, a partner of LP, died. B, LP's general partner, represents that LP, having relied on a professional tax advisor who failed to advise it of the availability and benefits of an election under § 754, filed its tax return for the Year 1 taxable year without a § 754 election to adjust the basis of the partnership property.

Section 754 provides that a partnership may elect to adjust the basis of partnership property in the case of a transfer of a partnership interest. The election applies 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 such election is 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 301.9100-2 and 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 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, LP is granted an extension of time for making the § 754 election until 60 days following the date of this letter. The election should be made in a written statement filed with the appropriate service center, for association with LP's tax return for the Year 1 taxable year. A copy of this letter should be attached to the § 754 election. A copy is enclosed for that purpose.

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(s) requesting 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 LP's authorized representative.

Sincerely yours,

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

Enclosures: 2

Copy of this letter

Copy for section 6110 purposes