

Dear _____ :

This letter responds to a letter dated April 27, 2004, and subsequent correspondence, requesting a ruling under § 301.9100-3(a) of the Procedure and Administration Regulations that Partnership be granted an extension of time in which to make an election under § 754 of the Internal Revenue Code.

Facts

According to the information submitted, during Year 1 Partnership was formed as a general partnership in State. Trust was formed as a revocable trust with A and B as grantors. Trust was formed in State, a community property state. Trust is an x-percent partner in Partnership. A died on Date 1.

Partnership relied on a professional tax return preparer for advice and to prepare its tax returns for filing with the Internal Revenue Service. The return preparer was unaware of A's death at the time he completed Partnership's tax return for the tax year including Date 1 and, therefore, did not advise Partnership of the availability and benefits of an election under § 754 and filed Partnership's tax return for the tax year including Date 1 without a § 754 election.

It is represented that Partnership acted reasonably and in good faith, that granting relief will not prejudice the interests of the government, and that Partnership is not using hindsight in making the election.

Law

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 with respect to which the election is filed and all subsequent taxable years.

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) permits the Commissioner to grant a reasonable extension of time for making certain elections. Section 301.9100-3 provides that an extension of time to file certain elections will be granted if the taxpayer is able to establish that it acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Conclusion

Based solely on the facts and representations submitted, we conclude that the requirements of §§ 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 § 754 election. 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. A copy of this letter is enclosed for that purpose.

Except as specifically set forth above, we express no opinion concerning the federal tax consequences of the transactions described above under any other provisions of the Code. Specifically, no opinion is expressed concerning whether Partnership is a partnership for federal tax purposes.

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.

Sincerely,

/s/

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

Enclosures (2):

Copy of this letter
Copy for § 6110 purposes

cc: