Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:1-PLR-162939-02
Date:
    January 7, 2003

Legend:

X   =

A   =

B   =

C   =

Y1   =

Dear   :

        This letter responds to your letter dated October 24, 2002 requesting an
extension of time under §§ 301.9100-1 through 301.9100-3 of the Procedure and
Administration Regulations to file an election under § 754 of the Internal Revenue
Code.

Facts

        X represents that in Y1, B transferred her interest in X to A and C. The
transaction qualified for an election under § 754. X's accountant, however, failed to
advise X of the availability and benefits of such an election.

        X 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

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.

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.

Under § 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 301.9100-1 through 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 § 301.9100-2. Requests for relief under § 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 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. As a result, X is granted an extension of time of 60 days following the date of this letter to make an election under § 754. The election should be made in a written statement filed with the appropriate service center. A copy of this letter should be attached to the statement filed. A copy of this letter is enclosed for that purpose.

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

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     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's authorized representative.

                  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