

Internal Revenue Service

Number: **200548002**

Release Date: 12/2/2005

Index Number: 754.00-00, 9100.00-00,
9100.15-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B01
PLR-111450-05

Date:
August 19, 2005

Legend

LLC =

A =

B =

C =

Date =

Year =

Dear :

This letter responds to a request dated February 15, 2005, on behalf of LLC by its authorized representative, for an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election under § 754 of the Internal Revenue Code.

FACTS

The information submitted states that LLC is a limited liability company that is treated as a partnership for federal tax purposes. A, one of LLC's owners, died on Date. At that time, A's interest in LLC transferred to B and C.

LLC relied on its tax advisor for tax advice. LLC's tax advisor inadvertently failed to inform LLC of the advisability of making an election under § 754 for Year, the year of A's death. LLC 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

Pursuant to § 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 was filed and all subsequent 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.

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 including an election whose deadline is prescribed by a regulations published in the Federal Register.

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 301.9100-1(a). Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions for time for making elections that do not meet the requirements of section 301.9100-2.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government. Section 301.9100-3(a).

CONCLUSION

Based solely upon 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, LLC 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 for association with LLC's return. A copy of this letter should be attached to the statement filed.

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, LLC must adjust the basis of property and B and C must adjust their basis in LLC 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 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 or not LLC is a partnership for federal tax purposes.

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.

Pursuant to the Power of Attorney on file with this office, a copy of this ruling will be sent to the taxpayer's representative.

Sincerely,

/s/ Heather C. Maloy

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

Enclosures (2)
Copy of this letter
Copy for section 6110 purposes

cc: