

Internal Revenue Service

Department of the Treasury

Number: **200145022**
Release Date: 11/9/2001
Index Number: 9100.15-00

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:3 PLR-121808-01

Date:

August 8, 2001

X:

M:

N:

a:

b:

Address:

Dear

This letter responds to a letter dated April 14, 2001, requesting an extension of time for X to elect under § 754 of the Internal Revenue Code to adjust the basis of partnership property. X represents the following facts.

M, a partner of X died in a. X filed its partnership return for the year of M's death without a § 754 election, having relied on a professional tax return preparer who failed to advise X of the availability and benefits of such an election.

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, 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 this section 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

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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.

Under § 301.9100-1(c) of the Procedure and Administration Regulations, 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.

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 a regulatory 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 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. Section 301.9100-3(a).

Based on the facts submitted and the representations made, X has established that the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied. Consequently, as conditioned in the following paragraph, X is granted an extension 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 8, at Address for association with X's return. A copy of this letter should be attached to the election statement.

As a condition for this late election relief, any allowable depreciation deduction for a on property held by N is to be computed using property basis unadjusted under § 743(b) because of M's death. Any depreciation deduction subsequently allowable, beginning in b, is to be computed based on remaining useful life and using property basis as adjusted by the greater of any depreciation deduction allowed or allowable in a had the § 754 election been timely made.

Except for the specific ruling above, no opinion is expressed or implied concerning the federal tax consequences of the facts of this case under any other provision of the Code. Section 301.9100-1(a) provides that the granting of an extension of time for making an election is not a determination that the taxpayer is otherwise eligible to make the election.

Under a power of attorney on file with this office, we are sending the original of this letter to you and a copy to the taxpayer.

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This ruling is directed only to the taxpayer on whose behalf it was requested. According to § 6110(k)(3), this ruling may not be used or cited as precedent.

Sincerely,
PAUL F. KUGLER
Associate Chief Counsel
(Passthroughs and Special Industries)

enclosures: copy of this letter
copy for § 6110 purposes