

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.201: Rulings and Determinations Letters:

(Also: 26 USC 754; 26 CFR 1.754-1(b)(1); 26 CFR 301.9100-2(c))

Rev. Proc. [XXXX-XX]

SECTION 1. PURPOSE

This revenue procedure provides guidance under § 754 of the Internal Revenue Code and § 1.754-1(b)(1) of the Income Tax Regulations for certain taxpayers to make late elections to adjust the basis of partnership property (herein, “basis adjustment elections”). The revenue procedure also provides guidance for those taxpayers that do not qualify under this revenue procedure and that are required to request a letter ruling in order to obtain relief for a late basis adjustment election.

SECTION 2. BACKGROUND

.01 Section 754 provides that 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.

.02 Section 1.754-1(b)(1) provides guidance on the time and method required for making a basis adjustment elections. Section 1.754-1(b)(1) provides that a partnership shall make an election 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, by means of 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 partnership must file the return not later than the time prescribed by § 1.6031-1(e) (including extensions thereof) for filing the return for such taxable year. Section 1.754-1(b)(1) further requires the electing partnership to furnish a statement, which shall (i) set forth the name and address of the partnership making the election, (ii) be signed by any one of the partners, and (iii) contain a declaration that the partnership elects

under § 754 to apply the provisions of § 734(b) and § 743(b).

.03 Section 301.9100-1(b) of the Procedure & Administration Regulations 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. A basis adjustment election is a regulatory election.

.04 Section 301.9100-1(c) provides that the Commissioner may grant a reasonable extension of time to make a regulatory election or certain statutory elections under all subtitles of the Code, except subtitles E, G, H, and I.

.05 Sections 301.9100-1 through 301.9100-3 provide the standards that 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.

.06 Section 301.9100-2(a) provides that an automatic extension of 12 months from the due date for making a regulatory election is granted to make certain elections provided the taxpayer takes “corrective action”, as described in § 301.9100-2(c), within this 12-month extension period. The due date for making a regulatory election is the due date of the return (extended by 12 months) if the due date of the election is the due date of the return or the due date of the return including extensions (and further extended by 12 months) if the taxpayer has obtained an extension of time to file the return. This 12-month extension is available regardless of whether the taxpayer timely filed its return for the year the election should have been made.

.07 Section 301.9100-2(c) provides, in relevant part with respect to § 754 elections, that for those elections required to be filed with a return, corrective action includes filing an original or an amended return for the year the regulatory or statutory election should have been made and attaching the appropriate form or statement for making the election. The regulation further provides that taxpayers who make an election under an automatic extension (and all taxpayers whose tax liability would be affected by the election) must file their return in a manner that is consistent with the election and comply with all other requirements for making the election for the year the election should have been made and for all affected years; otherwise, the IRS may invalidate the election.

.08 Section 301.9100-2(d) provides procedural requirements that a taxpayer must satisfy to obtain the automatic extension. It requires that any return, statement of election, or other form of filing that a taxpayer must make to obtain an automatic extension must furnish the following statement at the top of the document: “FILED

PURSUANT TO § 301.9100-2". It further requires that a taxpayer must send any filing intended to obtain an automatic extension to the same address that the taxpayer would have sent a filing to make the election had it timely done so. The IRS does not require taxpayer to make a request for a letter ruling to obtain an automatic extension.

.09 Section 301.9100-3(a) provides that the IRS will grant requests for relief under § 301.9100-3 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.

.10 Section 301.9100-3(b) provides that subject to paragraphs (b)(3)(i) through (iii) of § 301.9100-3, when a taxpayer reasonably relied on a qualified tax professional, including a tax professional whom the taxpayer employed, and the tax professional failed to make, or advise the taxpayer to make, the election, the taxpayer will be deemed to have acted reasonably and in good faith.

SECTION 3. SCOPE

.01 This revenue procedure provides an extension of 36 months from the due date for making a late basis adjustment election. Thus, an extended election period no longer is limited to partnerships making the election within the 12 month extension period set forth in § 301.9100-2(a)(1). For those entities that satisfy the requirements set forth in Sections 4.01 and 4.02, this revenue procedure is the exclusive means for obtaining relief to make a late basis adjustment election.

.02 The procedures in this revenue procedure are in lieu of the letter ruling procedure that is used to obtain relief to make a late basis adjustment election that previously did not satisfy the 12 month extension period set forth in § 301.9100-2(a)(1). Accordingly, user fees do not apply to corrective action under this revenue procedure.

.03 A taxpayer that is not eligible for relief under this revenue procedure may request relief by applying for a private letter ruling. The Service will not ordinarily issue a private letter ruling granting relief to make a late basis adjustment election if the period of limitations on assessment under § 6501(a) has lapsed for any partner's taxable year in which an election should have been made or any taxable year that the election would have affected had it been timely made, unless the partner has filed all relevant income tax and information returns timely and consistently with the requested relief. The procedural requirements for requesting a private letter ruling are described in Rev. Proc. 2010-1, 2010-1 I.R.B. 1 (or its successor).

SECTION 4. AUTOMATIC RELIEF FOR LATE BASIS ADJUSTMENT ELECTIONS UNDER THIS REVENUE PROCEDURE

.01 Eligibility for relief. An entity is eligible for relief under Section X.XX of this revenue procedure for a late basis adjustment election if it meets the following requirements:

- (1) the partnership failed to make a basis adjustment election solely because it did not timely meet the requirements of § 754 and § 1.754-1(b)(1);
- (2) the partnership timely filed the tax return on which it would have included the basis adjustment election had it included the election;
- (3) the partnership has reasonable cause for its failure to meet the requirements of § 754 and § 1.754-1(b)(1);
- (4) to the best knowledge of the taxpayer, no IRS examination office, appeals office or federal court is considering any return of the partnership or any partner that the election would have affected had the partnership timely made the election; and
- (5) 36 months from the due date for making the basis adjustment election have not passed.

.02 Procedural requirements for requesting relief. Within 36 months from the due date for making a basis adjustment election, the partnership must file an amended tax return for the tax year to which the late election related with the applicable IRS service center. The partnership must note on this return that it is filing the amended return pursuant to this revenue procedure by noting on the top of the return "FILED PURSUANT TO REV. PROC. 2010-XX". The partnership must also include any and all supporting forms and schedules which reflect changes arising from the late election, and a supplemental statement describing the adjustment to each form and schedule. The partnership must further include a declaration that it has satisfied the elements required for relief under section 4.01 of this revenue procedure as well as a statement explaining the reasonable cause for the failure to file a timely election.

The amended return, forms and schedules, declaration and reasonable cause statement must be accompanied by a dated declaration, signed by an authorized representative of the partnership which states: "Under penalties of perjury, I declare that I have examined this election, including any accompanying documents, and, to the best of my knowledge and belief, the election contains all the relevant facts relating to the election, and such facts are true, correct, and complete." The individual who signs this declaration must have personal knowledge of the facts and circumstances related to the election.

03. Relief to make late basis adjustment elections. Upon receipt of a completed application requesting relief under this revenue procedure, the IRS service center will determine whether the submitting partnership has satisfied the requirements for granting additional time to file a basis adjustment election and will notify the partnership of the result of its determination. Any partnership receiving relief under this revenue

procedure is treated as having made a timely entity classification election as of the requested effective date of the election, provided that:

- (1) All affected partners file all necessary amended tax returns for the tax year to which the late election relates with the appropriate service center within 90 days of the date of the service center's letter granting relief to make the late basis adjustment election. If the partners need not submit amended returns because their originally filed returns are consistent with the partnership having made the election, the partners should submit a statement to this effect; and
- (2) Both the partnership and all affected partners file amended tax returns for each tax year following the year of the late election with the appropriate service center within 90 days of the date of the service center's letter granting relief to make the late basis adjustment election. If the partnership and/or the partners need not submit amended returns because their originally filed returns are consistent with the partnership having made the election, the partnership and/or the partners should submit a statement to this effect.

SECTION 5. AREAS NOT COVERED BY THIS REVENUE PROCEDURE

By granting a partnership an extension of time to file a basis adjustment election, no opinion is expressed or implied concerning whether the partnership satisfies the requirements under § 754 or § 1.754-1(b)(1).

SECTION 6. EFFECTIVE DATE

.01 In general. This revenue procedure is effective DATE, the date of publication of this revenue procedure in the Internal Revenue Bulletin. This revenue procedure applies to requests pending with the IRS service center pursuant § 301.9100-2 on DATE, and to requests received thereafter. It also applies to all ruling requests pending in the national office on DATE, and to requests for relief received thereafter.

.02 Transition rule for pending letter ruling requests. If a partnership has filed a request for a letter ruling seeking relief to make a late basis adjustment election and that letter ruling request is pending in the national office on DATE, the partnership may rely on this revenue procedure, withdraw its letter ruling request and receive a refund of its user fee. However, the national office will process letter ruling requests pending on DATE, unless, prior to the earlier of LATER DATE, or the issuance of the letter ruling, the partnership notifies the national office that it will rely on this revenue procedure and withdraw its letter ruling request.

SECTION 7. PAPERWORK REDUCTION ACT

The collections of information contained in this revenue procedure have been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number XXXX-XXXX. The collection of information in these regulations is in Section 4.02 of this revenue procedure. The information will help the IRS to determine if a partnership meets the requirements of Section 4.01 of this revenue procedure. The collection of information is required to obtain permission to file a late basis adjustment election. The information will be reported on an amended tax return or submitted as part of a letter ruling request. The time needed to complete and file a letter ruling request or amended tax return will vary depending on individual circumstances. The estimated burden for partnerships filing a letter ruling request or an application for requesting late basis adjustment election relief are included in the estimates shown in the Paperwork Reduction Act of the annually published letter ruling revenue procedure and the instructions for making a basis adjustment election respectively. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

SECTION 8. DRAFTING INFORMATION

The principal author of this revenue procedure is Kevin I. Babitz of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this revenue procedure contact Kevin I. Babitz on (202) 622-3060 (not a toll free call).