



[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-116256-17]

RIN 1545-BN94

Streamlining the Section 754 Election Statement

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed amendments to the regulation relating to the requirements for making a valid election under section 754 of the Internal Revenue Code of 1986 (Code), as amended. The proposed regulation affects partnerships and their partners by removing a regulatory burden in making an election to adjust the basis of partnership property.

DATES: Electronic or written comments and requests for a public hearing must be received by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Send submissions to Internal Revenue Service, CC:PA:LPD:PR (REG-116256-17), Room 5203, PO Box 7604, Ben Franklin Station, Washington, DC 20044.

Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-116256-17), Courier's Desk, 1111 Constitution Avenue, N.W., Washington, DC, 20224, or sent electronically, via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (indicate IRS and REG-116256-17).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulation, Meghan Howard, at (202) 317-5055; concerning submissions of comments and requests for a public hearing, Regina Johnson, at (202) 317-6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

### **Background and Explanation of Provision**

This document contains proposed amendments to 26 CFR part 1 under section 754 of the Code. Specifically, these proposed amendments would remove the signature requirement contained in §1.754-1(b) (current regulation) in order to eliminate a regulatory burden.

Section 754 provides that if a partnership files an election (section 754 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 section 734 and, in the case of a transfer of a partnership interest, in the manner provided in section 743. Such an election applies with respect 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 such election was filed and all subsequent taxable years. Such election may be revoked by the partnership, subject to such limitations as may be provided by regulations prescribed by the Secretary.

The current regulation provides the method to make the section 754 election and states in relevant part that a section 754 election shall be made in a written statement (section 754 election statement) filed with the partnership return for the taxable year during which the distribution or transfer occurs. For the section 754 election to be valid,

the return must be filed not later than the time prescribed for filing the return for such taxable year, including extensions. The current regulation requires that the section 754 election statement (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 section 754 to apply the provisions of section 734(b) and section 743(b). Accordingly, under the current regulation, a partnership that files an unsigned section 754 election statement with its partnership return (whether filed electronically or in paper) has not made a valid section 754 election.

Currently the only remedy for failing to make a proper section 754 election is to request “9100 relief” to make a late section 754 election either: (1) through automatic relief, if the error is discovered within 12 months pursuant to §301.9100-2 of the Procedure and Administration Regulations; or (2) through a private letter ruling request pursuant to §301.9100-3. The IRS has received numerous requests for 9100 relief with respect to unsigned section 754 election statements, especially where returns have been filed electronically. In order to ease the burden on partnerships seeking to make a valid section 754 election and to eliminate the need to seek 9100 relief, the Treasury Department and the IRS are proposing to amend the current regulation to remove the signature requirement in §1.754-1(b)(1). The amended regulation will provide that a taxpayer making a section 754 election must file a statement with its return that: (i) sets forth the name and address of the partnership making the section 754 election, and (ii) contains a declaration that the partnership elects under section 754 to apply the provisions of section 734(b) and section 743(b).

### **Proposed Applicability Date**

The amendments to this regulation are proposed to apply to taxable years ending on or after the date of publication of the Treasury decision adopting these rules as a final regulation in the **Federal Register**. Taxpayers, however, may rely on this proposed regulation for periods preceding the proposed applicability date. Accordingly, partnerships that filed a timely partnership return containing an otherwise valid section 754 election statement, but for the missing signature of a partner on the statement, will not need to seek 9100 relief in such cases.

### **Special Analyses**

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. It is hereby certified that this regulation, if adopted, would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. chapter 6). This certification is based on the fact that this regulation reduces the information currently required to be collected in making an election to adjust the basis of partnership property and thereby reduces burden on small entities. Pursuant to section 7805(f) of the Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

### **Comments and Requests for a Public Hearing**

Before this proposed regulation is adopted as a final regulation, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the “Addresses” heading. The Treasury Department and the IRS

request comments on all aspects of the proposed regulation. All comments will be available at [www.regulations.gov](http://www.regulations.gov) or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

### **Drafting Information**

The principal author of this regulation is Meghan M. Howard of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the Treasury Department and the IRS participated in their development.

### **List of Subjects in 26 CFR part 1**

Income taxes, Reporting and recordkeeping requirements.

### **Proposed Amendment to the Regulations**

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

#### **PART 1—INCOME TAXES**

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Section 1.754-1 also issued under 26 U.S.C. 754.

Par 2. Section 1.754-1 is amended by revising the fourth sentence of paragraph (b)(1) and adding new paragraph (d) to read as follows:

§ 1.754-1 Time and manner of making election to adjust basis of partnership property.

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \* The statement required by this paragraph (b)(1) must set forth the name and address of the partnership making the election, and contain a declaration that the partnership elects under section 754 to apply the provisions of section 734(b) and section 743(b). \* \* \*

\* \* \* \* \*

(d) Applicability date. The fourth sentence of paragraph (b)(1) of this section applies to taxable years ending on or after the date these regulations are published as final regulations in the Federal Register. Taxpayers may, however, rely on the fourth sentence of paragraph (b)(1) of this section for periods prior to the date these regulations are published as final regulations in the Federal Register.

Kirsten Wielobob

Deputy Commissioner for Services and Enforcement

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