

# New Partnership Section 754 Election Regulations

## Cross References

- REG-116256-17 (October 12, 2017)
- IRC §754

Partnerships can elect under IRC section 754 to adjust the basis of partnership property when partnership property is distributed (IRC §734) or when a partnership interest is transferred (IRC §743). The election allows the partnership to adjust the basis of its property where inequities occur due to the fair market value and adjusted basis being different. The election applies to all distributions of property by the partnership and to all transfers of interests in the partnership during the year, and to all subsequent tax years. The election may be revoked by the partnership only with the consent of the IRS.

Current regulations provide that the IRC section 754 election be made with a signed written statement filed with the partnership return for the tax year during which the distribution or transfer occurs. The tax return must be filed by the due date of the return, including extensions. The partnership may make a late election by either requesting a "9100 relief," if the error is discovered within 12 months, or through a private letter ruling request. Both procedures are outlined in the regulations. [Reg. §301.9100-2 and §301.9100-3]

The IRS has received numerous requests for 9100 relief with respect to unsigned IRC section 754 election statements, especially where tax returns have been filed electronically. In order to ease the burden on partnerships seeking to make a valid election and to eliminate the need to seek 9100 relief, the IRS is proposing to amend the current regulations to remove the signature requirement. The amended regulations will provide that a taxpayer making an IRC section 754 election must file a statement with its return that:

- 1) Sets forth the name and address of the partnership making the election, and
- 2) Contains a declaration that the partnership elects under IRC section 754 to apply the provisions of IRC section 734(b) and 743(b).

The proposed regulations apply to the 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 these proposed regulations for periods preceding the proposed applicability date. Accordingly, partnerships that file a timely partnership return containing an otherwise valid IRC section 754 election statement, but without the signature of a partner on the statement, will no longer need to seek 9100 relief.