

Office of Chief Counsel
Internal Revenue Service
Memorandum

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date: June 23, 2009

to:
(Field Operations)

from:
(Small Business/Self-Employed)

subject:

This memorandum responds to your request for assistance dated June 1, 2009. This advice may not be used or cited as precedent.

ISSUE

1. Would the Form 872-P for be validly executed, if it is signed by , who is identified as "Managing member of , TMP of ?

CONCLUSION

1. Assuming that is a managing member of , and assuming that is a managing member and TMP of , then the Form 872-P was validly executed.

FACTS

filed a partnership return for its tax year. This return does not include the name of the TMP.

The Form 872-P for _____ tax year
 prepared by Appeals lists the signatory as “
 _____; by
 _____, its Tax Matters Partner; by _____, managing member of
 _____.”

You have requested that we assume _____ is, in fact, the managing
 member of _____ and that _____ is the managing
 member and the TMP of _____.

LAW AND ANALYSIS

An entity that is not classified as a corporation may elect to be treated as either a corporation or a partnership (if it has more than one member) for federal income tax purposes. Proc. & Admin. Regs. § 301.7701-3(a).

_____ elected partnership treatment when it filed a partnership income tax return for taxable year _____.

In the context of an LLC, the TMP is a person who (i) was the managing member of the LLC at some time during the taxable year, or (ii) is the managing member at the time the LLC designated a TMP. For the TMP designation to be valid, it must be made in accordance with Proc. & Admin. Regs. §§ 301.6231(a)(7)-1(e) and -2.

Assuming that _____ is a managing member of _____,
 and assuming that _____ is a managing member of and a TMP of _____,
 _____, the Form 872-P was validly executed.

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

If you need additional advice or have any additional questions, please call me at _____ if you have any further questions.

JAMES A. NELSON
 Area Counsel
 (Small Business/Self-Employed:Area 8)

By: _____

(Small Business/Self-Employed)