

Office of Chief Counsel  
Internal Revenue Service  
**Memorandum**

Release Number: **20103001F**

Release Date: 7/30/2010

CC:LM:CTM:SEA:SLCohen  
POSTSP-107553-10

date: February 26, 2010

to: (Team Manager)  
(Internal Revenue Agent)

from: LMSB Counsel, Seattle

---

subject: ; TEFRA Partnership Issues (FYE )

*Do not disclose – this writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views. This memorandum may not be cited as precedent.*

This memorandum responds to your request for advice regarding designation of a trust as a Tax Matters Partner (“TMP”) in a TEFRA partnership proceeding, and relies on the facts provided by the Examination Team to our office. If you find that any of the facts are incorrect, please advise us immediately so that we may modify and correct this advice.

## I. ISSUE

Whether certain partnerships may designate the \_\_\_\_\_  
as the TMP for the tax year \_\_\_\_\_ ?

## II. FACTS

The Service is examining approximately \_\_\_\_\_ domestic limited liability companies (treated as partnerships for Federal tax purposes) involved in a \_\_\_\_\_ sale of \_\_\_\_\_ . The partnerships owned the \_\_\_\_\_ , and at the time of the sale, \_\_\_\_\_ was a general partner and the TMP in each of the \_\_\_\_\_ partnerships.<sup>1</sup> \_\_\_\_\_ passed away in \_\_\_\_\_ . Upon his death, the majority

---

<sup>1</sup> Most of the partnerships treated the \_\_\_\_\_ transaction as a sale of partnership interests (thus resulting in a technical termination of the partnership), but some of the partnerships treated it as an asset sale. This distinction does not affect the analysis of whether the partnerships may now designate a trust as the TMP.

of \_\_\_\_\_ property passed to the \_\_\_\_\_ (“the Trust”). \_\_\_\_\_, \_\_\_\_\_, is the trustee of the Trust. The partnerships want to designate the Trust as the TMP.

### III. APPLICABLE LAW

Section 6231(a)(7)(A) of the Internal Revenue Code (“I.R.C.”) defines the TMP as the general partner designated as the TMP as provided in the regulations. Treasury Regulation § 301.6231(a)(7)-1 states that a partnership may designate a partner as its TMP for a taxable year only as provided in section 301.6231(a)(7)-1. Further, the designation of a partner as a TMP for a taxable year may be terminated only as provided in section 301.6231(a)(7)-1. If the designation is terminated without the partnership designating another general partner as the TMP, the TMP is the partner determined under section 301.6231(a)(7)-1.

In general, a person may be designated as the TMP of a partnership for a taxable year only if that person: (1) was a general partner in the partnership at some time during the taxable year for which the designation is made; or (2) is a general partner in the partnership at the time the designation is made. Treas. Reg. § 301.6231(a)(7)-1(b)(1). Section 7701 includes a trust within the definition of a person for purposes of the I.R.C.

A designation of a TMP for a taxable year remains in effect until there is a termination of the designation under section 301.6231(a)(7)-1(l). The death of the TMP is an event that terminates the TMP’s designation. Treas. Reg. § 301.6231(a)(7)-1(l)(i). If the partnership has designated a TMP for a taxable year, that designation has terminated under paragraph (l)(1) of section 301.6231(a)(7)-1, and the partnership has not made a subsequent designation under section 301.6231(a)(7)-1 for that taxable year, the TMP for that taxable year is determined under paragraph (m) of section 301.6231(a)(7)-1. Treas. Reg. § 301.6231(a)(7)-1(m)(1). In such a case, and in general, the general partner having the largest profits interest is the TMP (unless it is impractical to apply the largest profits interest rule, in which case the Service can select the TMP). Treas. Reg. § 301.6231(a)(7)-1(m) & (n).

Section 301.6231(a)(7)-1(e) & (f) set forth two situations in which a partnership may designate a TMP at any time after the filing of the partnership return for that year. Under paragraph (e) of section 301.6231(a)(7)-1, the partnership may file an appropriate statement with the Service, and signed by persons who were general partners at the close of the year and were shown on the return for that year to hold more than 50% of the aggregate interest in partnership profits held by all general partners as of the close of the taxable year.<sup>2</sup> Second, in certain limited circumstances (including the death of the general partner), a TMP for a partnership taxable year may be designated by filing a statement with the Service, and signed by persons who were

---

<sup>2</sup> Section 301.6231(a)(7)-1(e) & (f) set forth specific criteria that the partnership must follow when making a designation under these paragraphs.

partners at the close of the taxable year and were shown on the return for that year to hold more than 50% of the aggregate interest in partnership profits held by all partners as of the close of such taxable year. Treas. Reg. § 301.6231(a)(7)-1(f).

#### IV. ANALYSIS & CONCLUSION

In the present case, the partnerships designated the general partner to be the TMP for . This designation terminated on the date of death. The partnerships have not yet made a subsequent designation under section 301.6231(a)(7)-1. The partnerships want to designate the Trust as the TMP.

Based upon the facts provided and the applicable law, the partnerships may designate the Trust as the TMP in accordance with either paragraph (e) or (f) of section 301.6231(a)(7)-1 provided that, at the time of designation, the Trust is a general partner in the each of the partnerships. From the information provided thus far, we are unable to provide advice as to whether the Trust is a general partner in each of the partnerships.<sup>3</sup> If it can be confirmed that the Trust is a general partner in each of the partnerships, in order for a designation under paragraph (e) or (f) of section 301.6231(a)(7)-1 to be valid, each of the partnership returns for must be secured to ensure that the partnerships comply with the technical requirements of these paragraphs. Please note that the Form 13798-L is the proper form for a limited liability company to use to designate the TMP.

As a final matter, if the partnerships do not designate a TMP in accordance with section 301.6231(a)(7)-1, the TMP would be the general partner having the largest profits interest, unless it is impractical under section 301.6231(a)(1)-7(n) & (o) to apply this rule, and then the Service may designate the TMP in accordance section 301.6231(a)(1)-7(p).

Thank you for coordinating this matter with our office. If you have any questions or concerns regarding the above, please contact at .

Sincerely,

CATHY A. GOODSON  
Associate Area Counsel  
(Large & Mid-Size Business)

By: \_\_\_\_\_

Attorney (Seattle)  
(Large & Mid-Size Business)

<sup>3</sup> Such a determination most likely requires an analysis of whether, upon death, his general partnership interest in each of the partnerships passed to the Trust.