Office of Chief Counsel
Internal Revenue Service
Memorandum

Number: AM2015-003

Release Date: 2/27/2015
CC: PA:07:SLKaron
POSTN-102507-15

UILC: 6223.00-00, 6224.00-00, 6231.00-00

date: February 23, 2015

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subject: Requirements to link partners during a partnership-level examination and the issuance of notices

This Chief Counsel Advice responds to your request for assistance. This advice may not be used or cited as precedent.

ISSUES

(1) What are the legal requirements, if any for the Service to link direct partners and the members of any pass-thru partner on its Partnership Control System when it begins a TEFRA partnership-level examination?

(2) Is the Service required to notify a partner if it decides not to make an adjustment to the partnership return or decides not to adjust the partner's return to reflect adjustments made to the partnership return?

CONCLUSIONS

(1) The Partnership Control System is simply a tool used by the Service in the course of TEFRA partnership examinations. There are no legal requirements to link or not link any, all, or some partners in a partnership. Similarly, de-linking a partner has no legal impact and there are no notice requirements that would apply.

(2) The Service is not required to issue any notice to a partner if it decides not to make adjustments to the partnership return and it does not need to notify a partner that it will not be making an assessment.

FACTS

The Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA") added sections 6221 through 6232 to the Internal Revenue Code, which provide unified partnership audit and litigation procedures for partnerships (except certain small partnerships) filing Form 1065, U.S. Return of Partnership Income (TEFRA partnerships).[1] Under the unified partnership audit and litigation procedures, the TEFRA partnership return is subject to a single audit and court proceeding binding on all the direct and indirect partners. Only the partners whose tax liabilities will be affected, and generally not the TEFRA partnership itself, are the parties-in-interest in the partnership-level audit or litigation. *Chef's Choice v. Commissioner*, 95 T.C. 388 (1990).

The Internal Revenue Service ("Service") uses its Partnership Control System computer database to link to the TEFRA partnership return under examination the tax returns of the direct and indirect partners, to mechanically generate the required notices and to flow any adjustments made in the partnership examination through to the partners.

LAW AND ANALYSIS

Section 6221 provides that partnership items shall be determined at the partnership level.

Section 6223(a) provides that that that "the [Service] shall mail to each partner whose name and address is furnished to the [Service] notice of - (1) the beginning of an administrative proceeding at the partnership level with respect to a partnership item [NBAP], and (2) the final partnership administrative adjustment [FPAA] resulting from any such proceeding."

For these purposes section 6223(b) provides that the Service need not issue the above notices to partners with less than a one percent interest in a partnership with more than 100 partners. Instead, such partners get notice through the TMP. I.R.C. § 6223(g).

Section 6223(c) provides that the Service must use the names and addresses as provided on the partnership return as updated under the regulations. Section 6223(c)(3) provides that indirect partners[2] are not entitled to direct notice unless their information is provided to the Service in accordance with the regulations. Otherwise,

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[1] Sections 6233 and 6234 were later added to these provisions.

[2] Section 6231(a)(10) defines an indirect partner as a person holding an interest in a partnership through 1 or more pass-thru partners.

the pass-thru partner[3] through whom they hold their interest is required to forward notice to them. I.R.C. § 6223(h). The partners entitled to direct notice under section 6223 are "notice partners". I.R.C. § 6231(a)(8).

Section 6223(d)(1) provides that the Service "shall mail" the NBAP to each partner entitled to such notice "not later than the 120th day" before the FPAA is mailed to the Tax Matters Partner.

Section 6223(d)(2) provides that the Service "shall mail" the FPAA to each partner entitled to such notice "not later than the 60th day" after the FPAA is mailed to the TMP.

Section 6223(e) provides for a partner remedy "where the [Service] has failed to mail any notice specified in subsection (a) to a partner entitled to such notice ***within the period specified in subsection (d)***." (emphasis supplied)

Section 6224(c)(2) provides that if the Service "enters into a settlement agreement with any partner with respect to partnership items" the Service shall offer consistent settlement terms to any other partner who so requests.

DISCUSSION

There is no requirement in the Code to link any partner on the Partnership Control System. The Partnership Control System is simply a tool used by the Service in the Course of TEFRA partnership examinations. Therefore, the Service has complete discretion regarding the use of linkages. For example, the Service may choose to link all partners in a partnership, no partners, or some but not all partners, including some but not all partners in a particular tier. Similarly, if the Service chooses to link a partner, but ultimately determines that the partners will not be assessed, de-linking that partner has no legal impact and there are no notice requirements that would apply.

The Service is not required to issue an NBAP or FPAA to any partner if the Service ultimately determines that it will not make adjustments to partnership items. In this regard, section 6223(d) makes the issuance of such notices to the partners conditional on the Service issuing an FPAA to the TMP. Congress confirmed that the requirement to issue such notices is conditional by creating a remedy under section 6223(e) only if the time periods of section 6223(d) are not met. Furthermore, the only court to address the issue has confirmed that the Service has the discretion not to issue an FPAA to the TMP, even after an NBAP has been issued. *Atlantic Richfield v. Department of Treasury*, 97-1 USTC ¶50,170 (D.D.C. 1996). It should be noted that, since Partnership Control System is currently used to generate notices to linked partners, if the Service chooses not to link partners to whom notices are required, the Service will need to determine another way to issue those notices.

[3] Section 6231(a)(9) defines a "pass-thru partner" as a partnership, estate, trust, S corporation , nominee, or other similar person through whom other persons hold an interest in the partnership.

Other than the notices required above, there is no requirement under the TEFRA partnership provisions to notify or assess any direct or indirect partner. For instance, as part of its overall compliance plan, the Service may assess some partners in a partnership while not assessing the other partners in the same partnership. There is no statutory requirement to notify partners that they will not be assessed, whether they were or were not linked on the Partnership Control system.

The decision to assess one partner but not another partner in the same partnership does not constitute entering into a settlement agreement with the first partner that would entitle the second partner to the same treatment pursuant to section 6224(c)(2). There is no settlement agreement because there is no written offer and acceptance denoting a contractual meeting of the minds. *See Treaty Pines Investments Partnership v. Commissioner*, 967 F.2d 206, 211 (5th Cir. 1992) (contract principles apply, including a written offer and acceptance, in determining the existence of a settlement agreement under section 6224(c)). *See also Alexander v. United States*, 44 F. 3d 328, 332 (5th Cir. 1995) (section 6224(c) settlement analogous to a contract).

Otherwise, the only consistency requirement is that any assessments that are made must not exceed an assessment consistent with the partnership-level determination of partnership items. I.R.C. §§ 6221 and 6225(c).

Please call (202) 317-6834 if you have any further questions.