

Department
of the
Treasury

Internal
Revenue
Service

Office of
Chief Counsel

Notice

CC-2011-011

March 23, 2011

Notification to the IRS of Need for
Assessment in TEFRA Partnership
Cases in District Court and the Court
Subject: of Federal Claims

Upon incorporation
Cancel Date: into the CCDM

Purpose

This Notice provides guidance as to the procedures to follow in notifying the correct IRS Campus of the need for assessment with respect to docketed cases in district courts and the Court of Federal Claims subject to the unified partnership audit and litigation procedures of I.R.C. §§ 6221-6234. This notification must be given as soon as a partner-level settlement agreement is entered into or a decision is entered in such cases.

Background

Section 6225 provides in pertinent part that no assessment of a deficiency attributable to any partnership item may be made before the close of the 150th day after the day on which a notice of final partnership administrative adjustment is mailed to the tax matters partner. If a proceeding is begun in the Tax Court under section 6226 during such 150-day period, no assessment can be made until the Tax Court decision becomes final. Consequently, if the FPAA is petitioned only to a district court or the Court of Federal Claims, the FPAA adjustments may be immediately assessed if they are not subject to further partner-level affected item factual determinations.

A second restriction on assessment applies to affected items requiring partner level determinations. These affected items require a notice of deficiency that generally cannot be issued until the docketed partnership proceeding becomes final. See GAF Corp. and Subsidiaries v. Commissioner, 114 T.C. 519 (2000); Adkison v. Commissioner, 592 F.3d 1050, 1053-1056 (9th Cir. 2010) The Service generally has one year from the date a court decision becomes final to make direct assessments and issue affected item notices of deficiency. Unlike Tax Court cases, district court and Court of Federal Claims cases become final 60 days after a decision is entered.

If a partner enters into a settlement agreement with the Department of Justice, the settling partner's partnership items convert to nonpartnership items under section 6231(b)(1)(C) and the partner drops out of the partnership proceedings under section 6226(d)(1)(A). The Service

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generally has one year from the date that DJ accepts the partner's written settlement offer to assess tax against the settling partner. I.R.C. § 6229(f). DJ partner-level settlement agreements take the form of an offer by letter from the settling partner followed by an acceptance letter by DJ. Note that a stipulation, by itself, is generally not treated as a "settlement agreement" under section 6224(c) because it is subject to acceptance by the court and, thus, is not independently binding.

Currently, there is no formalized procedure for attorneys to notify the appropriate Campus (Ogden or Brookhaven) of a partner-level settlement agreement or a decision or dismissal in a district court or the Court of Federal Claims TEFRA partnership case.

Notification Procedures

The Counsel Automated Tracking System for Docketed Cases will have an event created so that the attorney assigned to a district court or the Court of Federal Claims TEFRA partnership case will receive periodic reminders of the need to assess. Such a reminder will appear as an event entitled "Follow-Up with DJ," which will occur approximately six months after a defense letter is mailed to DJ, and it will continue to occur every six months. When such an event appears on the weekly suspense report, the attorney must coordinate with the DJ attorney assigned to the case to determine whether DJ has entered into a partner-level settlement agreement and whether a decision or dismissal has been entered in the TEFRA partnership case. The CATS operator will receive from the attorney a written explanation of the status of the case (e.g., no decision, decision entered, or partner settlement), and the operator will enter a response into CATS. The CATS system will generate a monthly CATS status report of all such cases, and the report will be sent to both the Ogden Campus and the Brookhaven Campus.

Once partnership items are determined by settlement or court decision, the assigned attorney will instruct the campus to initiate the appropriate assessment procedure using the attached check sheet. Certain cases require special protective assessment procedures as specified in Chief Counsel Notice CC-2009-011, Protective Assessments of Affected Items in TEFRA Partnership Cases.

Any questions regarding this Notice should be directed to the Office of Associate Chief Counsel (Procedure & Administration), Branches 6 and 7 at (202) 622-3600 or (202) 622-3630, respectively.

/s/
Deborah A. Butler
Associate Chief Counsel
(Procedure and Administration)

Items Needed in a Closing Package for the Campus

The partner-level settlement agreement or court decision closing package will include the following documents if applicable:

- a) A Form 3210 noted as a court decision package which clearly indicates the partnership name, tax year, EIN, and one-year assessment statute date
- b) A Form 886-Z with the corrected amount for each adjusted item of the key case entity return that reflects the terms of the court decision and/or separate settlement agreement entered into by a partner;
- c) A copy of the court decision document and/or any separate partner-level settlement agreement;
- d) A Form 886-A explaining the changes, if appropriate;
- e) A completed Form 4605-A;
- f) Penalty information (except for tax years ending after August 5, 1997, since penalties must be included in the Form 4605-A for tax years ending after that date). If penalties are not applicable, note that fact in the package; and
- g) If Chief Counsel Notice CC-2009-011, Protective Assessments of Affected Items in TEFRA Partnership Cases, is applicable, notice of deficiency language must be included.

It is important that the correct Campus be informed of a separate partner-level settlement and/or court decision as soon as possible to allow them time to process the investor returns. The closing information should be sent as follows:

For LB&I Returns:

Internal Revenue Service
Mail Stop 4510 - Attn: TEFRA Coordinator
1973 N. Rulon White Blvd.
Ogden, Utah 84404

For SB/SE Returns:

Brookhaven Compliance Center
Internal Revenue Service
P.O. Box 630
Stop 630
Holtsville, New York 11742