



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

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Expiration Date: 12/02/2013
Affected IRM: 8.19.1

MEMORANDUM FOR APPEALS EMPLOYEES

FROM: Jennifer Vozne /s/ *Jennifer Vozne*
Director, Specialty Operations

SUBJECT: Interim Guidance (IG) on TEFRA Key Cases and Related
Partners Where the Statute is Controlled at the Partner Level

This memorandum issues guidance on TEFRA key cases where the statute is controlled at the partner level.

Purpose: In TEFRA cases, protection of the IRC section 6229 statute is always the preferred choice. In those rare circumstances where the TEFRA key case statute under IRC section 6229 will not be extended or has been allowed to expire, a TEFRA partnership proceeding may still be commenced and conducted under an open IRC section 6501 statute of one or more partners. Appeals has accepted such cases on a limited basis from Compliance with certain restrictions. This guidance is effective on the date of the memorandum and will be incorporated into the affected IRM within one year.

Background/Source(s) of Authority: It is the Service's position that there is only one statute for any taxpayer and that statute is controlled under the provisions of IRC section 6501. IRC section 6229(a) provides a minimum period for assessing tax attributable to partnership or affected items which cannot expire before 3 years after the later of the due date or filing date of the related TEFRA partnership return. IRC section 6229 may serve to extend the IRC section 6501 limitation period for partnership items, but cannot shorten a partner's IRC section 6501 statute.

The statute of limitations for assessment of any TEFRA partnership item is usually protected for all partners by an extension secured from the Tax Matters Partner or any other person authorized in writing at the key entity level. It can be extended at the partner level in lieu of protecting the statute at the partnership level. This provision, when used, creates administrative difficulties that result from protecting the statute for partnership items at the partner level. The Campus functions do not have the administrative capability to control or extend the statute of limitations of the partners.

The alpha AC statute code was created to identify those cases where the TEFRA partnership statute expired or will expire within 180 days and the Service is relying on open partners' statutes to work the partnership. This situation has resulted in administrative problems for both Compliance and Appeals because the TEFRA partnership case is not controlling the assessment statute as was originally intended.

Procedural Change: Briefly, Appeals will accept the TEFRA key case AND the partner returns where the IRC section 6501 statute dates of the partners have been extended to a certain date (using Form 872), that certain date is the same date for all partners cases transmitted to Appeals and that certain date is at least two years after receipt of the cases in Appeals. Detailed guidance is contained in: Attachment – IG Control No. AP-08-1113-0006. The attachment is the proposed IRM revision to IRM 8.19.1 for this change.

Effect on Other Documents: This guidance will be incorporated into IRM 8.19.1, *Appeals Pass-Through Entity Handbook, Procedures and Authorities*, within one year.

Effective Date: 12/02/2013

Attachment - IG Control No. AP-08-1213-0006

cc: www.irs.gov

Attachment – IG Control No. AP-08-1213-0006

IRM 8.19.1.6.6.8.2.4 (MM-DD-YYYY)

Statute Controlled at Partner Level

- (1) IRC 6501(a) provides the period of limitations for assessing any tax including tax attributable to partnership and affected items. This period runs from the filing date of an actual tax return rather than from the filing date of a pass-through entity information return (such as a partnership return). IRC 6229 merely extends each partner's IRC 6501 period. IRC 6229 provides that each partner's IRC 6501 assessment period for tax attributable to partnership and affected items shall not expire before the date that is three years after the later of the date on which the partnership return for the taxable year was filed, or the last day for filing the return for that year (determined without regard to extensions). Thus, IRC 6229 operates only to extend a partner's IRC 6501 period. It does not shorten the partners' otherwise applicable period for assessment. Statutes on TEFRA key cases received in Appeals are normally open under IRC 6229. However, there are occasions when Appeals receives a TEFRA key case where the IRC 6229 statute has expired (or the statute's future expiration has been approved) and the TEFRA proceeding is being conducted in reliance on one or more of the partners' Assessment Statute Expiration Date (ASED) under IRC 6501. Tax assessments may be made against the partners when the statute is open under either IRC 6229 or IRC 6501. Cases received with expired IRC 6229 statutes may not contain all partners' returns as some of their ASEDS under IRC 6501 may have also expired.
- (2) The TEFRA Coordinator in SB/SE Technical Services will notify Appeals TEFRA Technical Specialists via email or telephone when there are 10 or more taxable partners in a case group before allowing the taxpayers to file a protest or transferring the case to Appeals.
- (3) This procedure should be rarely used. The campus will not suspense partner returns when the statute is not protected at the partnership level. All partner level statute controlled cases must be associated with the TEFRA key case.
- (4) Where Compliance approved the past or future expiration of the IRC 6229 statute, documentation of that decision and approval must be in the administrative file when received.
- (5) If Appeals receives a TEFRA partnership key case with the statute controlled at the partner level, the partners' cases will accompany the key case. The partners' returns that accompany the key case must have the same ASED and have a minimum of two years remaining on that ASED when received in Appeals. The point of having two years remaining on the ASEDS is to ensure sufficient time for Appeals to consider the case without securing additional extensions.
- (6) As described in (5), when the case is received in Appeals, the partner level ASEDS must meet certain criteria. While generally, statutes controlled at the partner level can be extended using Form 872 or Form 872-A, for this type of case, the partners' ASEDS must be extended using only Form 872 (Rev. 4-2012). These Forms 872 contain the

specific language extending the period for assessing tax attributable to partnership items and provide a date certain for the partners' ASEDs. See IRM 8.19.1.6.6.8.2.

- (7) Under this procedure, the ASED for the partnership key case will be different on AIMS and ACDS. On AIMS, the partnership key case ASED must show an AC alpha statute code. On ACDS, the partnership key case ASED will be the common numeric ASED for the partners' returns. All related partner returns will have the common numeric ASED date for both AIMS and ACDS. The partners' statute code field should be blank.
- (8) For the partnership key case, the ACDS notes section should show: "AC statute case". For the partner's' cases, ACDS notes should show: "AC statute - related to [name of partnership]". The type code of the partnership key case is "TEFRA" and for the partners is "TEFRAI". Proposed dollars will be shown on the partnership key case in accord with IRM 8.19.10.2.4.2 and Exhibit 8.19.10-1; the partners' proposed dollars will be zero.
- (9) At the conclusion of the case, the partnership key case and partner cases will be handled as follows:
 - a. Agreed fully settled partnership adjustments – Appeals will secure agreements, execute them, and prepare closing packages. Mail the partner returns and the closing packages to the CTF. At this point there is a one-year assessment date and the CTF can process the partner cases (do the computations and assessments). The assessments must be made as soon as possible after the agreement is received.
 - b. Unagreed cases with one year or more remaining on common statute - Appeals will prepare the required FPAA language for the unagreed issues. The cases (partnership key case and partner cases) will be returned to SB/SE Technical Services. One year must remain on the partner's common statute when received by SB/SE Technical Services.
 - c. Unagreed cases with less than one year remaining on common statute – Appeals will prepare and issue the FPAA. After the FPAA is issued, the partner cases will be sent to the CTF for suspense.
 - d. Partially agreed cases – Instructions for preparing partial agreements are in IRM 8.19.11.11. Appeals prepares the required closing packages for the partial agreement and sends it to the CTF. For unagreed issues, follow the instructions in b. or c. above.
- (10) For Compliance instructions for these procedures, refer to IRM 4.31.2.4.1.1.