



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

February 20, 2014

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Impacted IRMs: 4.31.2 and 25.6.23

MEMORANDUM FOR ALL LB&I AND SBSE TECHNICAL EMPLOYEES

FROM: Shenita L. Hicks /s/ *Shenita L. Hicks*
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Small Business Self Employed Division (SBSE)

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Large Business and International Division (LB&I)

SUBJECT: Tax Equity and Fiscal Responsibility Act (TEFRA) Partnership Level Statute Protection at the Partner Level and the Use of Alpha Statute Code AC

The purpose of this memorandum is to provide guidance for statute protection of taxpayers having investments in partnerships or limited liability companies (LLCs) subject to TEFRA procedures when the TEFRA partnership's IRC 6229 statute has not been protected or has expired, and at least one partner's IRC 6501 statute remains open. This guidance is effective immediately. Please ensure this information is shared with all employees within your organization.

Generally and as a best practice, the IRC 6229 statute should be extended at the TEFRA partnership level using a Form 872-P, *Consent to Extend the Time to Assess Tax Attributable to Partnership Items*. These consents to extend the statute are executed by the tax matters partner (TMP) of the TEFRA partnership (or any other person authorized by the partnership in writing to enter into such an agreement), and extend the statute for all direct and indirect partners. The Form 872-P extends the statute for a defined period of time. The Form 872-O, *Special Consent to Extend the Time to Assess Tax Attributable to Partnership Items*, which extends the IRC 6229 statute indefinitely, should not be used with these procedures.

When it is not possible to secure statute extensions at the TEFRA partnership level, or it is not feasible to issue a final partnership administrative adjustment (FPAA) report, examiners must follow the procedures outlined in **Attachment 1** prior to allowing the partnership statute to expire with an open IRC 6501 statute or opening a partnership examination utilizing an open partner statute. Additionally, examiners **must** secure approval from the Director of Field Operations (DFO), or Area Director (AD) prior to proceeding with an examination using alpha statute code AC. See **Attachment 2** for the template to secure this approval.

This guidance will be incorporated into IRM 4.31.2, *Pass-Through Entity Handbook, TEFRA Examinations, Field Office Procedures*, and IRM 25.6.23, *Examination Process - Assessment Statute of Limitations Controls*, by February 20, 2015.

If you have any questions or need additional information regarding this memorandum, please contact LB&I Partnership -TEFRA Technical Advisor, Mark Ransick or SBSE National TEFRA Technical Advisor Janice Mueller.

Attachments (2)

cc: irs.gov

TEFRA Partnership Level Statute Protection at the Partner Level and the use of Alpha Code AC – Procedures

When it is not possible to secure statute extensions at the TEFRA partnership level, or it is not feasible to issue a final partnership administrative adjustment (FPAA) report,

1. **Examiners must immediately make a TEFRA referral** using the specialist referral system, [SRS - \(Specialist Referral System\)](#).
2. Make this referral prior to allowing the partnership statute to expire with an open IRC 6501 statute or opening a partnership examination utilizing an open partner statute.
3. Once the referral is accepted, a meeting must be held between the field examiner, his or her manager, the technical services (TS) program manager (PM), the assigned TEFRA analyst, the TEFRA group manager, and the local TEFRA coordinator (TLC).
4. During the preliminary call, the examiner will provide the following information:
 - a. the partnership name,
 - b. entity identification number (EIN),
 - c. applicable tax years, and
 - d. the yK1 link analysis tool report that identifies all partners with open IRC 6501 statutes and their ownership percentages.

Examiners will work with the local TEFRA coordinator (LTC) to:

1. Reach agreement with all internal parties concerning necessary actions, a timeline and a statute extension requested date, as appropriate. The examiner must establish the existence of a significant compliance issue in order to continue using the procedures described in this memo.
2. Protect the TEFRA statute at the partner level by securing Form 872 (Rev.4-2012), *Consent to Extend the Time to Assess Tax*, for all partners in the TEFRA entity. The most current revision of this form includes TEFRA language to extend the partner(s) statute for partnership issues. These statute extension forms extend the partner's IRC 6229 and IRC 6501 statutes.
 - a) Solicit statute extensions for all partners, with the same extension date to allow ample processing time – dependent on the type of closure.
 - i. **Agreed** – At least **12 months** must remain on the IRC 6501 partner(s) statute at the time the case is closed from the group to TS.
 - ii. **Unagreed** – for partners protesting to Appeals there must be **32 months** remaining on the statute(s) when the case is closed from the group to TS.
3. If any partner does not wish to extend the statute as explained above in # 2, the examiner will close the case to TS for the issuance of an FPAA and the case will not go to Appeals. The examiner must follow imminent statute procedures when there are less than **240 days** remaining on the IRC 6229 or IRC 6501 statute(s) at the time the case is closed from the group to TS.
4. The partnership statute cannot be updated with alpha statute code AC until there are **180 days or fewer** on the numeric statute date of the TEFRA Partnership return. Director of Field Operations (DFO) or Area Director (AD) **approval must be secured prior to using alpha statute code AC.** A copy of the approved memo must be sent to the TS PM. The ***Approval Memo Template, (Attachment 2 to Interim Guidance SBSE-04-0214-0012)*** must be used to obtain approval.

- a. DFO or AD approval must be secured before the partnership's IRC 6229 statute is **within 180 days** of expiration. In those rare instances where the IRC 6229 statute has already expired and it is deemed necessary to pursue an examination, approval must be received prior to initiation of an examination.
 - b. Once approval has been secured, and **180 days or fewer** remain on the partnership statute, the update to alpha code AC should be requested.
 - c. The pass-through tier statute should also be updated to alpha code AC if the regular statute date is **within 180 days** of expiration or has expired, **unless** the tier itself is also under exam for ***non***-TEFRA items.
 - d. The **month** and **year** segments will keep the date of the normal three year, or extended, statute date. Only the day segment of the statute date will be updated to AC. For example, if the regular three-year expiration date is 03/15/2014, then the updated statute should show as 03/AC/2014.
5. Protect 100% of all partner statutes with respect to adjustments flowing from the TEFRA entity. If this is not possible, provide an explanation as to why certain partners' statutes were allowed to expire on the TEFRA partnership Form 895, *Notice of Statute Expiration*.
 6. Ensure that when alpha statute code AC is used at the key case and tier levels, none of the underlying partners have an HH alpha statute code. All taxable partners must have a numeric statute date.
 7. The examiner will also be responsible for controlling all pass-through partners (tiers) and all direct and indirect partners that have open IRC 6501 statutes. For all partner tax years that are affected by carryover, the exam field group will also control carryback, and net operating loss (NOL) adjustments. (*Freeze code 6* must be added to the carryover/carryback and NOL years.) The LTC and examiner will contact the Campus TEFRA Function (CTF) requesting all direct and indirect partners be transferred to the field exam group when controlled by the CTF.
 8. The CTF must be notified when the partnership IRC 6229 statute is allowed to expire and only partners with open IRC 6501 statutes will continue to be examined. The examiner will prepare a memorandum to the CTF identifying the direct and indirect partners that will **not** continue to be examined due to expired IRC 6501 statutes. This allows the CTF to close these direct and indirect partners. Form 8339, *Partnership Control System (PCS) – PCS Change*, and copies of executed statute extensions must be sent to CTF electronically using the designated mailbox found on Form 14090, *TEFRA Electronic Linkage Request Check Sheet (LB&I)*, or Form 14091, *TEFRA Electronic Linkage Request Check Sheet (SBSE)*.
 9. The partnership must have complete partnership control system (PCS) linkage of all direct and indirect partners with open IRC 6501 statutes. All direct and indirect partners not already established on AIMS must be established on AIMS in the field prior to submitting the linkage package. PCS linkage is mandatory, and must be completed within 5 days of receiving DFO or AD approval to continue or initiate the audit. The examiner will provide a memorandum with the PCS linkage package to the CTF indicating which direct and indirect partners must be linked in addition to identifying their IRC 6501 statutes. Once linked CTF will provide notice support.
 10. If the case has the potential of closing unagreed, the examiner will notify the LTC. The LTC will notify Appeals via e-mail 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.
 11. The examiner will work with the assigned LTC to ensure the TEFRA summary report (Forms 4605-A, *Examination Changes – Partnerships, Fiduciaries, S-Corporations*,

and Interest Charge Domestic International Sales Corporations (Unagreed and Excepted Agreed), Form 886-A, Explanation of Items, and Form 886-Z, TEFRA Partners' Shares of Income) and Form 870-PT, Agreement for Partnership Items & Partnership Level Determinations as to Penalties, Additions to Tax, and Additional Amounts, are valid before providing the report to the tax matters partner (TMP). The Form 870-LT, Agreement for Partnership Items and Partnership Level Determinations as to Penalties, Additions to Tax, and Additional Amounts and Agreement for Affected Items, will not be used in this process. This will eliminate the need for TS to return the partnership case back to the field examiner to correct the summary report and/or agreement forms. The case file must have a notation that the partnership closing conference was held or a properly executed copy of the waiver of the closing conference is included in the case file.

12. Ensure copies of consents to extend statutes as well as Integrated Data Retrieval System (IDRS) command code TSUMY prints verifying partner linkage to the TEFRA entity are included in the case file prior to closing the TEFRA partnership return to TS.

Agreed Case Closures:

If agreement is secured, the case should be processed according to normal TEFRA closing procedures. The exam field group will transfer the case group, (i.e. the partnership key case and all direct and indirect partners with open IRC 6501 statutes) to TS. Carryover/carryback years are also included. Pass-through partners (tiers) will also be closed to TS.

Unagreed Case Closures:

If the field exam group utilizing an AC alpha statute code controls the partnership case and the TMP or a partner is requesting an appeal, the following actions must be taken:

1. All open IRC 6501 partner statutes must have a minimum of **32 months** remaining on the statute when closing from the group and all of the statutes must be extended to the same date, i.e. no "rolling statutes" will be allowed. See examples below on page 5.
2. The TMP or partner must provide a formal protest for an appeal and include the taxpayer's position for each unagreed issue. The examiner will review the taxpayer's position and provide a rebuttal or indicate no further action is required by the field.
3. The exam field group will transfer the case group (i.e. the partnership key case and all direct and indirect partners with open IRC 6501 statutes) to TS. Carryover/carryback years are also included. Pass-through partners (tiers) will also be closed to TS.
4. All pass-through partners (tiers), partner carryover/carryback and NOL years, will be closed to CTF by TS in unagreed cases.

Note: TS will issue FPAAs if:

1. The case is unagreed and the partnership and partners have not requested an appeal; or
2. The direct and indirect partners with open IRC 6501 statutes refuse to extend their IRC 6501 statutes to the required **32-month** minimum statute with all statutes expiring on the same date.

Technical Services to Appeals Processes:

The TS LTC will provide priority handling of these cases in processing returns to appeals. Where employees are required to take actions timely, but no specific timeframe is identified (e.g., timely notice by appeals employees when agreements have been secured), timeliness will be determined by what is reasonable under the circumstances taking into account mitigating factors.

Appeals will accept jurisdiction of the TEFRA partnership, direct and indirect partners (case group) when the direct and indirect IRC 6501 statutes are extended to the same date and **24 months** remain on all statutes when received in appeals. Therefore, TS employees must ensure there is, at a minimum 24 months + 14 business days remaining on the statute prior to forwarding the case to appeals. The case must arrive in appeals as a complete package. TS will forward the case to appeals using the following address:

Internal Revenue Service
Office of Appeals MS 8900
Attn: APS
24000 Avila Road Suite 4404
Laguna Niguel, CA 92677-3407

The appeals officer will notify both the exam field group and the LTC when the statute expiration date has changed in addition to updating the appeals centralized database system (ACDS).

Appeals Closures:

If agreement cannot be reached in appeals, an FPAA must be issued. If more than **12 months** remain on the statute controlling the case, appeals will work with counsel to prepare FPAA language for all unagreed issues. Appeals will send the case to the LTC for issuance of the FPAA.

Note: At least **12 months** must remain on the statute controlling the case when received by the TS LTC.

If less than **12 months** remain on the controlling IRC 6501 statutes, the appeals officer becomes responsible for issuing all FPAA's and all follow-up procedures on all related IRC 6501 cases.

Appeals will notify the exam field group, LTC and CTF when the case is unagreed and either being returned to TS or the FPAA is going to be issued by appeals.

Closing

It is important to remember that the most basic tenet of TEFRA is consistent treatment of partners. If there is an adjustment being made to one partner, it is likely there are corresponding adjustments that should be made to other partners; therefore, it is a best practice to protect the TEFRA statute at the TEFRA partnership-level whenever possible.

Example 1 – Controlling the Statute Using Partners’ IRC section 6501**Dates:**

When the TEFRA IRC §6229 statute has expired at the partnership level, the Service may conduct a TEFRA partnership examination relying on partners with unexpired IRC §6501 statutes or extended with consents to extend the statute that also extend any related IRC §6229 statutes for those partners’ partnership interests. In this situation, the Service relies on the shortest statute of all partners with open statutes rather than using multiple or “rolling statutes.”

Example:

Partnership ABC’s IRC §6229 2009 TEFRA statute is 04/15/2013
Partner 1’s IRC §6501 2009 statute is 04/15/2014 due to late filing
Partner 2’s IRC §6501 2009 statute is 08/15/2014 due to a secured Form 872
Partner 3’s IRC §6501 2009 statute is 04/15/2013

In the example, Partnership ABC’s IRC §6229 statute for 2009 expired on 04/15/2013; however, based on Partner 1’s IRC §6501 statute, which is the most conservative statute date remaining open, the Service can conduct an audit of Partnership ABC and issue a notice of Final Partnership Administrative Adjustment (FPAA) to the partnership, Partner 1, and Partner 2. However, the 2009 statute of Partner 3 has expired and the Service cannot adjust Partner 3.

If during the partnership examination, Partner 1 extends their statute to 12/31/2014, the controlling statute changes. When Partner 1 extends their statute beyond the Partner 2 statute of 08/15/2014, the statute controlling (protecting) the partnership examination now becomes 08/15/2014. The FPAA’s must now be issued by 08/15/2014. Partner 3’s status remains unchanged and they are not affected by the TEFRA partnership examination.

In order to avoid the “rolling statutes” as described in the example above, all partner statutes must be extended to the same date, which must be at least 32 months from the date closed from the exam field group to Technical Services.

Example 2 -Unagreed Case – Partner Statute:

Partnership ABC’s IRC §6229 2009 TEFRA statute is 04/15/2013

Partner 1’s IRC §6501 statute - 04/15/2014
Partner 2’s IRC §6501 statute - 08/15/2014
Partner 3’s IRC §6501 statute - 10/15/2014

All partners must extend their statutes for 32 months from the shortest open partner statute. In this example, all partners must extend their statutes to 12/15/2016 (04/15/2014 being shortest partner statute). The carryover/carryback and NOL years must also be extended to the same date for all direct and indirect partners.

(Insert date here)

MEMORANDUM FOR DIRECTOR, SB/SE EXAMINATION – AREA X or
 DIRECTOR, FIELD OPERATIONS, LARGE BUSINESS &
 INTERNATIONAL

FROM: <Name of Requestor>
 <Title><Office Codes>

SUBJECT: <SELECT THE APPLICABLE PARAGRAPH>
 Approval to Initiate a TEFRA Key Case Examination with a Closed
 IRC §6229 Key Case Statute of Limitations Using a Partner’s Open
 IRC §6501 Statute of Limitations

Approval to Allow the IRC §6229 Key Case Statute of Limitations
 to Expire and Rely on the Partner's Open IRC §6501 Statute of
 Limitations

Name of TEFRA Key Case	
TIN of TEFRA Key Case	
Tax Year	
IRC §6229 Key Case Statute	

Name of Partner	TIN	IRC §6501 Statute

In accordance with Interim Guidance Memo SBSE-04-0214-0012, “*TEFRA Partnership Level Statute Protection at the Partner Level and the Use of Alpha Code AC*”, and IRM Section 4.31.2, your approval is required to initiate a TEFRA key case examination with a closed IRC §6229 key case statute of limitations using a partner’s open IRC §6501 statute of limitations. This is commonly referred to as an “AC Statute” controlled case.

Prior to submitting this memo, the field must make a referral on the Specialist Referral System (SRS) to involve a local TEFRA coordinator (LTC). Once the referral is accepted, a meeting must be held between the field examiner, his or her manager, the SB/SE Examination -Technical Services program manager, the TEFRA technical advisor, the TEFRA group manager, and the local TEFRA coordinator (LTC) to develop a processing timeline. The approved timeline must be submitted with this memorandum.

<Insert paragraph(s) explaining the facts and circumstances supporting the request to continue the TEFRA key case audit with less than 12 months on the IRC §6229 statute or the Service is relying on the IRC §6501 statute instead of the expired IRC §6229 statute. >

If there are 12 months or fewer on the key case partnership statute, or the key case statute has expired, the RA will be responsible for completing all TEFRA procedures as outlined in Attachment 1 of Interim Guidance Memo SBSE 04-0214-0012, entitled *“TEFRA Partnership Level Statute Protection at the Partner Level and the use of Alpha Code AC”*.

A copy of the signed memorandum must be sent to Program Manager, Technical Services, Western at IRS, 1999 Broadway, 28th Floor, MS:4020DEN, Denver, CO 80202-3025.

If you or your staff have any questions regarding this approval, please contact <INSERT AREA CONTACT INFORMATION>

Approved Disapproved

_____ <NAME> _____ Date: _____
LB&I Director of Field Operations
SBSE Exam Director, XXX Area