August 26, 2021

MEMORANDUM FOR ALL LB&I and SB/SE FRONTLINE MANAGERS AND EXAMINERS

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SUBJECT: Guidance on the Revocation of Internal Revenue Code Section 754 Election Procedures

This memorandum outlines new procedures for use by LB&I and SB/SE employees when determining whether to approve or deny a request filed by a partnership to revoke its election to adjust the basis of partnership property under IRC section 754.

Purpose: The purpose of this memorandum is to establish new field procedures, processes and guidelines to LB&I and SB/SE employees who review partnership election revocation requests.

Background/Source(s) of Authority: A partnership with an IRC section 754 election in place may revoke such election with the approval of the district director for the internal revenue district in which the partnership return is required to be filed. See Treasury Regulation section 1.754-1(c). Districts were abolished with the 2000 IRS restructuring, and the regulations have not been updated to reflect the current IRS organizational structure. Also see Servicewide Delegation Order No. 1-23, Authorization to Perform Functions of the Commissioner.

Procedural Change: Attached guidance applies to any partnership, whether subject to the unified rules under TEFRA (Tax Equity and Fiscal Responsibility Act of 1982), the centralized audit regime under BBA (Bipartisan Budget Act of 2015), or separate deficiency proceedings (ILSC – Individual Level Statute Control).
Effect on Other Documents: Guidance is based on a new process and new procedure where there is no related IRM section. Procedures will be housed in IRM 4.31, Pass-Through Entity Handbook.

Effective Date: August 26, 2021

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Attachment: Guidance on the Revocation of Internal Revenue Code Section 754 Election Procedures

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Overview

Filing the Section 754 Election

In general, IRC section 754 allows a partnership to adjust the basis of the property within a partnership under IRC section 734(b) and IRC section 743(b). These adjustments arise when one of two triggering events occur: 1) a distribution of partnership property or 2) certain transfers of a partnership interest. These adjustments can only be made if the partnership has made an election under IRC section 754.

To make the election, a partnership must attach a statement to the partnership’s timely filed tax return (including extensions) for the tax year in which a distribution or transfer occurs. The statement must include: (1) the name and address of the partnership, and (2) a declaration that the partnership elects under IRC section 754 to apply the provisions of IRC sections 734(b) and 743(b). See Proposed Treasury Regulation section 1.754-1(b)(1).

Once an election is made under IRC section 754, it applies to all distributions and transfers made during the tax year with respect to which the election is initially filed, and to all such transactions in any subsequent tax years unless the election is revoked. It can only be revoked with permission of the Commissioner.

Revoking the Section 754 Election (Form 15254)

A partnership wishing to revoke the election should file a request using newly published Form 15254, Request for Section 754 Revocation no later than 30 days after the close of the partnership year for which the revocation is intended to take effect. The request must be signed by one of the partners.

Treasury Regulation section 1.754-1(c) provides examples of situations which may warrant approving an application for revocation. These examples include situations where the IRC section 754 election results in an administrative burden, such as: 1) a change in the nature of the partnership’s business, 2) a substantial increase in the partnership’s assets, 3) a change in the character of the partnership’s assets, or 4) an increased frequency of retirements or shifts of partnership interests. No application for revocation of an election shall be approved when the purpose of the revocation is primarily to avoid a reduction in the basis of partnership assets upon a transfer or distribution.
The partnership must provide all information relating to the reasons for the revocation request and a statement of whether the election, if not revoked, would result in a reduction in the basis of the partnership's property under IRC section 734(b) or section 743(b).

Regardless of whether an IRC section 754 election is in place, in the case of partnership distributions, the partnership must reduce the basis of its assets under IRC section 734(b) if the sum of the distributee partner's loss on the distribution and the basis increase in the distributed properties with respect to the distributee partner is more than $250,000. See IRC sections 734(b) and (d)(1). For transfers of partnership interests, the partnership must adjust the basis in property having a substantial built-in loss more than $250,000 immediately after a transfer of a partnership interest. See IRC sections 743(b) and (d).

Processing the Requests Received

1. Newly published Form 15254 instructs partnerships to file requests to revoke IRC section 754 elections with the Ogden, UT Service Center.

2. The requests received are routed to the LB&I Pass-Thru Entities Global High Wealth Workload Services (GHW WLS) area in the Ogden Service Center.

3. Within fourteen (14) days, GHW WLS will scan the documents and process the Form 15254 Section 754 Revocation Request package using the current procedures after reviewing the BOD Code on the IDRS Command Code INOLES screen.

4. GHW WLS will retain the original documents until a final determination is made and communicated to GHW WLS by the relevant division. See the separate Document Retention procedures for each division.
Interim Procedures for LB&I Partnerships

Incoming Section 754 Revocation Requests

1. GHW WLS submits the request received to the LB&I Pass-Thru Entities (PTE) Partnerships Practice Network (PN) via the Submit an Inquiry Link along with IDRS research, including but not limited to INOLES, AMDISA, CFINK, BMFOLI, and BMFOLT. See EXH 2, Instructions for Submitting an Inquiry to the LB&I Pass-Thru Entities Partnerships Practice Network.

2. The LB&I Partnerships PN Coordinator will assign the inquiry to a Subject Matter Expert (SME) within seven days of receipt via the Request Tracker.

3. The SME assigned to the inquiry will include the scanned documents on the Collaboration History Sheet (CHS).

Making the Determination

1. Within sixty (60) days, the SME will review the revocation request to determine whether it should be approved or denied.

2. The SME will review the IDRS research provided by GHW WLS, including but not limited to INOLES, AMDISA, CFINK, BMFOLI, and BMFOLT.

3. If the partnership is under examination (see BMFOLI, BMFOLT, and/or AMDISA), the SME will collaborate with the PTE Frontline Manager (FLM) to determine whether the revocation request determination would impact the examination or vice versa.

4. In making the determination, the SME at a minimum:
   a. will follow the guidelines outlined in Treas. Reg. section 1.754-1(c),
   b. obtain a YK-1 graph to understand the partnership structure,
   c. use the Employer User Portal (EUP) to obtain the history of the partnership’s section 754 election(s), if such history is not included with the request,
   d. if needed, request copies of prior paper filed returns internally using Form 5345-D, Source Code 45 or request them from the partnership’s contact person identified on the Form 15254;
   e. determine whether the section 754 election was previously revoked within five years; and
   f. verify the amount of the section 734(d) and/or section 743(d) adjustment that would be required if the election remains in place.
      a. Note that a negative basis adjustment in excess of $250,000 is required regardless of whether a section 754 election is in place. See IRC section(s) 734(d) and 743(d).
5. The SME will include the YK-1 graph, IDRS research received, and other pertinent documents in the CHS.

Managerial Concurrence

1. The SME will prepare (but not execute) Letter 6297, *Internal Revenue Code (IRC) Section 754 Revocation Request Determination Letter* using the appropriate selectable paragraphs for approval or denial of the request.

2. The revocation request, Letter 6297, and other pertinent information are provided to the PTE FLM for review and concurrence.

Counsel Review

1. If the PTE FLM concurs with the determination made, the revocation request, the unexecuted Letter 6297 and other pertinent information are forwarded to IRS Counsel for review.
   
   **A.** All *approved revocation requests* must be reviewed by IRS Counsel through December 31, 2022.

   **B.** All *denied revocation requests* must be reviewed by IRS Counsel until further notice.

Determination Letter Signatures (Letter 6297)

1. Letter 6297 is only executed after the IRS Counsel review is complete (if applicable under Counsel Review 1.A.).

2. The PTE FLM executes Letter 6297 on behalf of the PTE Director for all *approved revocation requests*. See IRM 1.2.63.2.15, LB&I Division Delegation Order (DDO) No. 1-23-16.

3. The PTE Program Manager (or Senior Manager) executes the determination letter on behalf of the PTE Director for all *denied revocation requests*. See IRM 1.2.63.2.15, LB&I Division Delegation Order (DDO) No. 1-23-16.

4. The executed Letter 6297 will be provided to the SME and included in the CHS.
Document Retention

1. The SME completes Form 3870, Request for Adjustment, to obtain a Document Locator Number (DLN). See EXH 3, Form 3870, Request for Adjustment.

2. The Form 3870 is approved by the PTE Team Manager.

3. The SME emails the approved Form 3870 to the *LB&I 754 Revocation Document Retention mailbox along with a copy of the executed Letter 6297.

4. GHW WLS will process the Form 3870 and obtain the DLN. See EXH 4, Transaction Code (T/C) 290 Instructions.

5. Once the DLN is obtained, GHW WLS will route the original documents and the copy of the executed Letter 6297 to Files to be associated with the partnership’s last filed return:

   Internal Revenue Service
   Ogden Submission Processing Center
   1973 N. Rulon White Blvd., Stop 6722
   Central Control Team
   Ogden, Utah 84404

Outgoing Section 754 Revocation Request Determination

1. The SME coordinates mailing the executed Letter 6297 to the partnership through the PTE group secretary.

2. The SME completes the request tracker close out procedures.

3. The SME includes all documents and the executed Letter 6297 in the CHS on the PTE SharePoint.
Interim Procedures for SB/SE Partnerships

Incoming Section 754 Revocation Requests

1. GHW WLS submits the request received, by secured email, to SB/SE HQ Partnership Analysts at *SB/SE_HQpship_Inquiry along with IDRS research, including but not limited to INOLES, AMDISA, CFINK, BMFOLI, and BMFOLT.

2. GHW WLS scans the documents and includes them with the inquiry submission, as well as retains the original documents until the approved Form 3870, Request for Adjustment, is received as part of the Document Retention procedures. See EXH 3, Form 3870, Request for Adjustment.

3. HQ Analysts will assign the inquiry to a Senior Flow-Through Specialist (SFTS) and coordinate with SB/SE Division Counsel Points of Contact (POCs), who will co-assign the inquiry to a partnership cadre attorney from local Counsel (Cadre Attorney) within seven (7) days of receipt via email.

Making the Determination

1. Within seven (7) days of co-assignment, the SFTS and the Cadre Attorney will start the review of the IRC section 754 revocation request.

2. If the partnership is under examination (see BMFOLI, BMFOLT, and/or AMDISA), the SFTS will collaborate with the examination team manager to determine whether the revocation request determination would impact the examination or vice versa.

3. Within ninety (90) days (unless the SFTS determines the partnership needs to be opened for examination), the SFTS along with the co-assigned Cadre Attorney will review the revocation request to determine whether it should be approved or denied. In making the determination, the SFTS at a minimum:
   a. will follow the guidelines outlined in Treas. Reg. section 1.754-1(c),
   b. obtain a YK-1 graph to understand the partnership structure,
   c. use the Employer User Portal (EUP) to obtain the history of the partnership’s section 754 election(s), if such history is not included with the request,
   d. if needed, request copies of prior paper filed returns internally using Form 5345-D, Source Code 45 or request them from the partnership’s contact person identified on the Form 15254;
   e. determine whether the section 754 election was previously revoked within five years; and
   f. verify the amount of the section 734(d) and/or section 743(d) adjustment that would be required if the election remains in place.
      i. Note that a negative basis adjustment in excess of $250,000 is required regardless of whether a section 754 election is in place. See IRC section(s) 734(d) and 743(d).
Cadre Attorney Concurrence

1. The SFTS, with the help of the co-assigned Cadre Attorney, will prepare (but not execute) Letter 6297, Internal Revenue Code (IRC) Section 754 Revocation Request Determination Letter, using the appropriate selectable paragraphs for approval or denial of the request.

Mandatory SB/SE Division Counsel Coordination

1. If the Cadre Attorney concurs with the determination made, the revocation request, the unsigned Letter 6297 and other pertinent information are forwarded to SB/SE Division Counsel POCs for review.
   a. All approved revocation requests must be reviewed (but not executed) by SB/SE Division Counsel POCs until further notice.
   b. All denied revocation requests must be reviewed (but not executed) by SB/SE Division Counsel POCs until further notice.

2. Letter 6297 is only executed after SB/SE Division Counsel coordination is complete.

Determination Letter Signatures (Letter 6297)

1. The SFTS will send, by secured email, the revocation request, three (3) copies of the Letter 6297, and other pertinent information to the SFTS’s local Technical Services to execute Letter 6297.

2. A Technical Services group manager will sign all three (3) copies of Letter 6297. See IRM 1.2.65.4.23 and Servicewide Delegation Order No. 1-23.

3. Technical Services will overnight mail (or electronically transmit, if allowed under applicable procedural guidance) two (2) of the executed Letters 6297 to the SFTS and retain the third executed Letter 6297 for their records in accordance with the established document retention policy.

Document Retention

1. The SFTS completes Form 3870, Request for Adjustment, to obtain a Document Locator Number (DLN). See EXH 3, Form 3870, Request for Adjustment.

2. The Form 3870 is approved by the SFTS Group Manager.

3. The SFTS emails the approved Form 3870 to the *LB&I 754 Revocation Document Retention mailbox along with a copy of the executed Letter 6297.

4. GHW WLS will process the Form 3870 and obtain the DLN. See EXH 4, Transaction Code (T/C) 290 Instructions.
5. Once the DLN is obtained, GHW WLS will route the original documents and the copy of the executed Letter 6297 to Files to be associated with the partnership's last filed return:

Internal Revenue Service
Kansas City Submission Processing Center
333 W. Pershing Road, Mail Stop 6700
Attention: CCU
Kansas City, MO 64108-4302

Outgoing Section 754 Revocation Request Determination

1. The SFTS will mail the executed Letter 6297 to the partnership.

2. The SFTS will electronically file the IRC 754 revocation package including all documents and letters in the IRC 754 Revocation Folder on the SB/SE EQTS SharePoint site.