

**Office of Chief Counsel
Internal Revenue Service**
memorandum

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Via Electronic Mail

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to: Shenita L. Hicks, Director Examination, Small Business/Self Employed

from: William A. Heard, III
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(Procedure & Administration)

subject: Failure to Withdraw Notice of Beginning of Administrative Proceeding to the Tax Matters Partner within 45 days

This advice may not be used or cited as precedent.

ISSUE

If the Service does not withdraw a notice of beginning of administrative proceeding to the tax matters partner within 45 days of issuing that notice must such a notice be immediately issued to each of the notice partners?

FACTS

Current Service practice is to issue notices of beginning of administrative proceeding ("NBAP") to notice partners if such a notice to the tax matters partner ("TMP") is not withdrawn within 45 days of its issuance. If the TMP NBAP is not withdrawn within this 45 day period, all partners are immediately "linked" to the partnership examination on the Partnership Control Computer System ("PCS"), their partner returns are ordered from files, individual partner files are built, and NBAPs are issued to the notice partners. If the partner is a pass-thru entity (such as another partnership), an additional linking process may be followed with respect to the investors in the pass-thru partner. Ultimately, if the Service proposes no adjustments to the partnership return, the partner files are deconstructed with no further processing. This labor intensive procedure is followed despite the fact that a significant number of audits ultimately result in no adjustments to the partnership return.

Consideration is being given to delaying decisions on linking the notice partners until Exam has a better idea of whether adjustments may ultimately be proposed to the partnership return.

LAW

Internal Revenue Code section 6223(d) provides that the Service must issue NBAPs to notice partners not later than 120 days before the Service issues a notice of final partnership administrative adjustment ("FPAA") to the tax matters partner. Section 6223(e) provides a remedy if the Service violates this "120 day rule".

Treas. Reg. § 301.6223(a)-2(a) provides that the Service may withdraw the NBAP to the TMP within 45 days of issuing it. The regulation provides that if the Service withdraws the NBAP to the TMP "neither the Internal Revenue Service nor the tax matters partner is required to furnish any notice with respect to that proceeding to any other partner." The regulation states that the Service is not required to issue an FPAA if it fails to withdraw the NBAP. See also Atlantic Richfield Company, et al. v. Dept. of Treasury, 97-1 USTC ¶50,170 (D.C. D.Ct.) (holding the same for a period predating the regulation).

In summary, section 6223(d) requires the issuance of NBAPs to notice partners only if the Service ultimately issues an FPAA to the TMP. The regulations provide no contrary rule.

CONCLUSION

Even if the TMP NBAP is not withdrawn, the Service may delay issuing NBAPs to notice partners until 120 days before an FPAA is issued to the TMP. The Service may completely forgo issuing NBAPs to the notice partners if no FPAA is ultimately issued.