

Office of Chief Counsel
Internal Revenue Service
Memorandum

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to: Internal Revenue Agent (Laguna Niguel)
(Large Business & International)

from: Attorney (Laguna Niguel)
(Large Business & International)

subject:

 - Form 2848 review – Part II
UIL 6061.00-00

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NOTICE OF FACTS RELIED UPON

This advice pertains to the facts as stated. If you believe the facts are different than those stated, do not rely on this advice and contact our office for further assistance.

LEGEND

Parent	=
Subsidiary	=
LLC A	=
LLC B	=
LLC C	=
Member 2	=
Individual	=
Year at Issue	=
Year 1	=
Year 2	=
Date 1	=

Date 2 =
XX =

See IRC § 6231(a)(1)(B)(i) (TEFRA generally does not apply to small partnerships which are defined as partnerships having 10 or fewer partners each of whom is an individual (other than a nonresident alien), a C corporation, or an estate of a deceased partner.)

ISSUES, LAW AND ANALYSIS, AND CONCLUSIONS

Please read the memorandum POSTN-102507, Number: AM2015-004, released 4/3/2015, which is incorporated herein by reference. We further opine as follows:

The relevant sections of Delaware law read as follows:

Unless otherwise provided in a limited liability company agreement, the management of a limited liability company shall be vested in its members in proportion to the then current percentage or other interest of members in the profits of the limited liability company owned by all of the members, the decision of members owning more than 50 percent of the said percentage or other interest in the profits controlling; provided however, that if a limited liability company agreement provides for the management, in whole or in part, of a limited liability company by a manager, the management of the limited liability company, to the extent so provided, shall be vested in the manager who shall be chosen in the manner provided in the limited liability company agreement. The manager shall also hold the offices and have the responsibilities accorded to the manager by or in the manner provided in a limited liability company agreement. Subject to § 18-602 of this title, a manager shall cease to be a manager as provided in a limited liability company agreement. A limited liability company may have more than 1 manager. Unless otherwise provided in a limited liability company agreement, each member and manager has the authority to bind the limited liability company.

6 Del.C. § 18-402. Management of Limited Liability Company.

Unless otherwise provided in the limited liability company agreement, a member or manager of a limited liability company has the power and authority to delegate to 1 or more other persons the member's or manager's, as the case may be, rights and powers to manage and control the business and affairs of the limited liability company, including to delegate to agents, officers and employees of a member or manager or the limited liability company, and to delegate by a management agreement or another agreement with, or otherwise to, other persons. Unless otherwise provided in the limited liability company agreement, such delegation by a member or manager of a limited liability company shall not cause the member or manager to cease to be a member or manager, as the case may be, of the limited liability company or cause the person to whom any such rights and powers have been delegated to be a member or manager, as the case may be, of the limited liability company.

6 Del.C. § 18-407. Delegation of rights and powers to manage.

Delaware law defers to the operating agreement regarding who has authority to manage an LLC, and the default provisions of Delaware law only apply if the operating agreement does not address the matter.

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

How the tax years should be listed by the taxpayer on Form 2848 is best explained by reference to the instructions to Form 2848, which read as follows:

In order for the power of attorney to be valid, you must enter the description of the matter, the tax form number (where applicable), and the year(s) or period(s) (where applicable). For example, you may list "Income, 1040" for calendar year "2010" and "Excise, 720" for "2010" (this entry covers all quarters in 2010). You may list consecutive multiple years or a series of inclusive periods, including quarterly periods, by using "through," "thru," or a hyphen. For example, "2008 thru 2010" or "2nd 2009 - 3rd 2010." For fiscal years, enter the ending year and month, using the YYYYMM format. Do not use a general reference such as "All years," "All periods," or "All taxes." The IRS will return any power of attorney with a general reference. Representation only applies for the years or periods listed on line 3. List on line 3 only tax forms directly related to the taxpayer listed on line 1.

You may list the current year/period and any tax years or periods that have already ended as of the date you sign the power of attorney. You may also list future tax years or periods. **However, the IRS will not record on the CAF system future tax years or periods listed that exceed 3 years from December 31 of the year that the IRS receives the power of attorney.** You must enter the description of the matter, the tax form number, and the future year(s) or period(s). If the matter relates to estate tax, enter the date of the decedent's death instead of the year or period. If the matter relates to an employee plan, include the plan number in the description of the matter.

[REDACTED]

[REDACTED]

[REDACTED]

