

Office of Chief Counsel
Internal Revenue Service
Memorandum

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date: March 21, 2016

to:
Revenue Agent
(Large Business & International)

from:

(Large Business & International)

subject:

This memorandum is in response to your request for advice. This advice has been coordinated with P&A in National Office. This advice may not be used or cited as precedent.

DISCLOSURE STATEMENT

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

ISSUE

Whether the TEFRA partnership's statute of limitations is sufficient to make adjustments that allocate all profits, losses, and credits away from two of the three partners of the TEFRA partnership to the third partner.

CONCLUSION

Yes, because adjustments that allocate profits, losses, and credits are considered partnership items and are therefore controlled by the partnership's statute of limitations and not an individual partner's statute of limitations.

FACTS¹

(" ") is a limited liability company organized under the laws of and is classified as a TEFRA partnership for federal tax purposes. For the years under examination, taxable years ended and (the "Applicable Tax Years"), three entities held membership interests in : (i) (" ") with % of the outstanding membership interests; (ii) (" ") with % of the outstanding membership interests; and (iii) (" ") with % of the outstanding membership interests.

is also classified as a partnership for federal tax purposes. During the Applicable Tax Years, had two members. One is , who holds % of the outstanding membership interests and the other is (" "), who holds % of the outstanding membership interests. is a special purpose entity created for the purpose of entering into . is a wholly-owned, disregarded entity of (" "), which is the holding company for

The agent secured a signed Form 872-P from to extend the period of limitations to assess tax for partnership items until . The Form 872-P is valid because it was signed by , the president of , and is the TMP of .

The agent anticipates making adjustments to that would reallocate all profits, losses, and credits to the general partner . The agent would disallow section 45 refined coal tax credits and ordinary losses for and on the basis of three theories. One, that is not a valid partnership. Two, that and do not have a bona fide partnership interest in . Third, that the refined coal transactions lacked economic substance for and .

The agent wants to know if there would be any non-TEFRA adjustments that would arise from these adjustments to and its partners.

¹ Our understanding of the facts of this case is limited to the information that you have provided to us unless otherwise stated. We have not undertaken any independent investigation of the facts of this case. If the facts known to us are incorrect or incomplete in any material respect, you should not rely on this advice, but instead should contact our office immediately.

LAW AND ANALYSIS

Law

Partnership items flow through and appear in the computation of the taxable income of the partners and affect non-partnership items on a partner's tax return. I.R.C. §§ 6230(a)(1) and 6231(a)(4)-(a)(6); Treas. Reg. § 301.6231(a)(5)-1. There are two types of affected items, those that require only a computation of the tax immediately assessable; and those that require partner-level determinations made through a notice of deficiency. I.R.C. § 6230(a); Treas. Reg. § 301.6231(a)(6)-1; *Petaluma FX Partners, LLC v. Commissioner*, 131 T.C. 84, 90 (2008) *aff'd in part*, 591 F.3d 649 (2010).

A computational adjustment is the change in the tax liability of a partner that properly reflects the treatment of a partnership item. IRC § 6231(a)(6). A computational adjustment may be assessed without following deficiency procedures if no partner-level determinations are required. IRM 8.19.1.6.9.7(3).

A partnership item is any item required to be taken into account for the partnership's taxable year under any provision of Subtitle A of the Code, to the extent that regulations provide that an item is more appropriately determined at the partnership level rather than at the partner level. IRC § 6231(a)(3), *see also* CC Notice 2009-027. The partnership aggregate and each partner's share of items of income, gain, loss, deduction, or credit are considered partnership items. Treas. Reg. § 301.6231(a)(3)-1(a)(1). To the extent an adjustment to one partner's share affects other partners' shares, such an adjustment is more appropriately determined at the partnership level. *See, e.g., Blonien v. Commissioner*, 118 T.C. 541 (2002).

If a partnership return is filed for a year but it is determined that no partnership exists, the subchapter that governs the procedure for taxing partnership items still applies to the extent provided in the regulations. IRC § 6233. The regulations provide that the TEFRA provisions will generally continue to apply if a purported partnership files a partnership return. Treas. Reg. § 301.6233-1T(a). "The determination of whether a partnership should be disregarded for tax purposes under a legal doctrine such as sham or economic substance is a partnership item." *Petaluma FX Partners, LLC*, 131 T.C. at 93.

Section 6501(a) provides the period of limitations within which the Service may assess any tax imposed by Title 26 of the United States Code, including tax attributable to partnership and affected items. A taxpayer can consent to extend the period of limitations. IRC § 6501(c)(4).

Section 6229(a) provides that each partner's section 6501 assessment period for tax attributable to partnership and affected items will 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). A partnership can also consent to extend its period of limitations by agreement. IRC § 6229(b)(1).

Analysis

The agent anticipates making adjustments to refined coal tax credits and ordinary losses for three theories. that would disallow section 45 and on the basis of

First, the agent would make an adjustment on the basis that is not a valid partnership. The determination of whether a partnership is a sham, lacks economic substance, or otherwise should be disregarded for tax purposes is a partnership item. *Petaluma FX Partners, LLC*, 131 T.C. at 97.

Second, the agent wants to make an adjustment that reallocates credits and losses on the basis that and do not have a bona fide partnership interest in . The adjustment would affect each partner's share of credits and losses, which are considered partnership items. Treas. Reg. § 301.6231(a)(3)-1. Such an adjustment would also affect the other partners' shares, which makes this adjustment more appropriately determined at the partnership level. *Id.*; *Blonien, supra*.

Third, the agent wants to make an adjustment on the basis that the refined coal transactions lacked economic substance for and . The agent's adjustment would reallocate credits and losses from and to the third partner, . Like the question of whether a partner has a bona fide partnership interest discussed above, the adjustment finding a partnership's transaction lacked economic substance would be considered a partnership item since it affects both the partnership's aggregate share of the credits and losses as well as each partner's share of the credits and losses. Treas. Reg. § 301.6231(a)(3)-1.

All three of the agent's proposed adjustments would be partnership items. The period of limitations for assessing any tax attributable to any partnership item for a partnership taxable year shall not expire before the date which is three years after the later of the date on which the partnership return for such taxable year was filed, or the last date for filing such return for such year, without regard to extensions. IRC § 6229(a). The adjustments are attributable to a partnership items and the period of limitations is determined by section 6229. Therefore, the period of limitations for assessing tax is based on ' period of limitations and not the individual partners', because the adjustments are attributable to partnership items.

Please call if you have any further questions.

Associate Area Counsel
(Large Business & International)

By: _____

(Large Business & International)