



OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224
September 27, 2000

Number: **200052017**
Release Date: 12/29/00
C:PA:APJP:2
TL-N-2908-00

UILC: 6501.08-00
6229.02-00

INTERNAL REVENUE SERVICE NATIONAL OFFICE FIELD SERVICE ADVICE

MEMORANDUM FOR ASSOCIATE DISTRICT COUNSEL (KANSAS-MISSOURI
DISTRICT, KANSAS CITY)
CC:MSR:KSM:KCY

FROM: Assistant Chief Counsel (Administrative Provisions & Judicial
Practice)
CC:PA:APJP

SUBJECT: Notice Requirement for Securing Consents to Extend the
Statute of Limitations

This Field Service Advice responds to your memorandum dated June 23, 2000. Field Service Advice is not binding on Examination or Appeals and is not a final case determination. This document is not to be used or cited as precedent.

DISCLOSURE STATEMENT

Field Service Advice is Chief Counsel Advice and is open to public inspection pursuant to the provisions of section 6110(i). The provisions of section 6110 require the Service to remove taxpayer identifying information and provide the taxpayer with notice of intention to disclose before it is made available for public inspection. Sec. 6110(c) and (i). Section 6110(i)(3)(B) also authorizes the Service to delete information from Field Service Advice that is protected from disclosure under 5 U.S.C. § 552 (b) and (c) before the document is provided to the taxpayer with notice of intention to disclose. Only the National Office function issuing the Field Service Advice is authorized to make such deletions and to make the redacted document available for public inspection. **Accordingly, the Examination, Appeals, or Counsel recipient of this document may not provide a copy of this unredacted document to the taxpayer or their representative.** The recipient of this document may share this unredacted document only with those persons whose official tax administration duties with respect to the case

and the issues discussed in the document require inspection or disclosure of the Field Service Advice.

LEGEND

Taxpayer	=	
Partnership A	=	(TMP for Partnership B)
Partnership B	=	
Representative	=	(Representative for Partnerships A and B)
Mr. A	=	(CFO of Corporation A)
Corporation A	=	(TMP for Partnership A)
District X	=	
Date 1	=	
Date 2	=	
Date 3	=	
Date 4	=	
Tax Year 1	=	
Tax Year 2	=	
Tax Year 3	=	
Tax Year 4	=	

ISSUES

1. Whether the notice requirements of section 6501(c)(4)(B) apply to an extension of the period of limitations under 6229(b)(1)(B) (applicable to an assessment of tax attributable to partnership items under the TEFRA rules).
2. Whether the Service can rely on the consents to extend the period of limitations obtained from Partnerships A and B if the Service did not comply with the notice requirements of section 6501(c)(4)(B).

CONCLUSIONS

1. The Service is required to comply with section 6501(c)(4)(B) even though the statute of limitations for a TEFRA partnership (section 6229) does not expressly incorporate the notice requirements of section 6501(c)(4)(B).
2. Because neither Partnership A nor Partnership B received the required notice under section 6501(c)(4)(B), the Service cannot rely on the consents obtained from the partnerships.

FACTS

In Tax Year 4, District X opened an audit on Taxpayer's individual income tax returns for Tax Year 1 and Tax Year 2. After the Service began the audit, the District expanded the audit to include Partnership A, Partnership B, and three S corporations, in which Taxpayer has an ownership interest. Both Partnership A and Partnership B are subject to the TEFRA partnership rules. Corporation A is the tax matters partner of Partnership A. Partnership A is the tax matters partner of Partnership B. Mr. A is the chief financial officer of Corporation A. Partnerships A and B are represented by Representative.

On Date 1, the revenue agent in charge of the audit prepared Forms 872-P, Consent to Extend the Time to Assess Tax Attributable to Items of a Partnership, extending the period of limitations on assessment from Date 3 to Date 4 for Tax Year 3 for Partnerships A and B. The revenue agent mailed these consents to Representative without Letter 907, Request to Extend Statute. Additionally, the revenue agent failed to discuss the section 6501(c)(4)(B) rights of Partnership A or Partnership B with Representative. After receiving the consents, Representative forwarded the consents to Mr. A for signature. Mr. A signed and returned the consents for Partnership A and Partnership B to the revenue agent on Date 2.

LAW AND ANALYSIS

Issue 1

The period of limitations within which to assess tax is generally governed by section 6501. In the case of tax attributable to adjustment of partnership items, the unified procedures of TEFRA and section 6229 apply. See Rhone-Poulenc Surfactants & Specialties, L.P. v. Commissioner, 114 T.C. 533 (2000). Section 6229(b)(1)(B) provides that the period within which to assess tax attributable to partnership items may be extended on behalf of all partners by an agreement with the tax matters partner (TMP).¹ In determining the validity of a consent under section 6229(b)(1)(B), the requirements of section 6501 as well as those of section 6229(b) must be taken into

¹ The TMP of Partnership A is Corporation A. The Form 872-P for Partnership A was executed by Mr. A, an officer of Corporation A. As chief financial officer of Corporation A, Mr. A is authorized to execute consents to extend the period of limitations on behalf of Corporation A. See Rev. Rul. 83-41, 1983-1 C.B. 349, clarified by, Rev. Rul. 84-165, 1984-2 C.B. 305. Thus, if the consent for Partnership A is otherwise effective, all partners of Partnership A are bound by that consent. Similarly, if the consent for Partnership B is otherwise effective, then it would bind the partners of Partnership B. The consent for Partnership B was executed by Mr. A. He was authorized to execute this consent as he is an officer of the TMP of Partnership A, and Partnership A is the TMP of Partnership B.

account. As stated in CC&F Western Operations, L.P. v. Commissioner, T.C. Memo. 2000-286, Congress did not intend to create a completely separate statute of limitations for assessments attributable to partnership items. Thus, section 6229 merely supplements section 6501 and does not repeat all of the terms and provisions set forth in section 6501. We therefore conclude that the Service must comply with the requirements of section 6501(c)(4)(B) in securing a consent under section 6229(b)(1)(B).

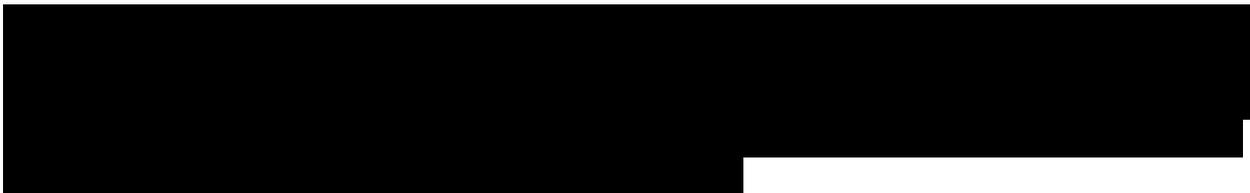
Issue 2

Section 6501(c)(4)(B) provides that the Service shall notify the taxpayer of the following rights: 1) to refuse to extend the period of limitations; 2) to limit such extension to particular issues; and 3) to limit the extension to a particular period of time. This notice must be provided each time an extension is requested. The legislative history of this provision states that Congress believed that taxpayers should be fully informed of their rights with respect to the statute of limitations on assessment. Congress expressed concern that in some cases taxpayers were not fully aware of their rights to refuse to extend the statute of limitations, and have felt that they had no choice but to agree to extend the statute of limitations upon the request of the Service. See H.R. Conf. Rep. No. 105-599 at 286 (1998).

Section 6501(c)(4)(B) applies to each request to extend the period of limitations on assessment made after December 31, 1999. The consents at issue for Partnership A and Partnership B were secured on Date 2. Thus, the requirements of section 6501(c)(4)(B) apply to the consents secured from Partnership A and Partnership B.

The Service must satisfy the requirements of section 6501(c)(4)(B) by advising the taxpayer of the rights set forth in section 6501(c)(4)(B). Congress intended that the Service follow section 6501(c)(4)(B) when soliciting consents to extend the period of limitations on assessment. Here, Partnerships A and B and Representative were not advised of section 6501(c)(4)(B) when the consents were requested. The revenue agent did not advise the partnerships or Representative of the section 6501(c)(4)(B) rights either orally or in writing or by providing a copy of Publication 1035, Extending the Tax Assessment Period. Thus, we conclude that the Service cannot rely on the consents executed by Partnerships A and B on Date 2.

Case Development, Hazards, and Other Considerations



You note that Partnership A and Partnership B are subject to TEFRA and that the entities are part of a complex corporate structure. You also point out that Mr. A, who executed the consents, and Representative are both experienced business people accustomed to executing consents. You urge us to draw the inference that experienced business persons, such as Mr. A and Representative, must be aware of taxpayers' rights under section 6501(c)(4)(B) and that actual notice under that section is thus unnecessary. However, there is no support in the statutory language or the legislative history for creating an "experienced business person" exception to the requirements of section 6501(c)(4)(B). Advice regarding the section 6501(c)(4)(B) rights must be given on each occasion when a waiver is requested. The Service may not assume that the representative or the taxpayer had knowledge about their right to notification under section 6501(c)(4)(B) based on their level of sophistication or experience.

You have also pointed to facts regarding the execution of consents by entities related to Partnerships A and B during the same period of time. In particular, you note that an individual representing certain related S corporations proposed that the consents be limited to particular issues, and you indicate that Taxpayer and the individual representing the S corporations must have had knowledge of the right to refuse to sign a consent. We regard these facts as irrelevant to the inquiry here. Those consents were executed by a different representative than the one representing Partnerships A and B. Further, each business entity is entitled to notice under the statute without regard to the knowledge that an owner of the entity has concerning section 6501(c)(4).

In addition, we have concerns about the consents secured for the subchapter S corporations. Therefore, we recommend that your office review these consents more closely and the circumstances surrounding them to ensure that the taxpayers received proper notification under section 6501(c)(4)(B).

If you have any questions or concerns regarding this response, please contact Brad Taylor at (202) 622-4940.

CURTIS G. WILSON

By: _____
Michael L. Gompertz
Assistant to Chief, Branch 2