

INTERNAL REVENUE SERVICE
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

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Index (UIL) No.: 6229.02-00
CASE MIS No.: TAM-117007-00/CC:PA:APJP:B3

March 1, 2001

Appeals LMSB Area Director (Area 2)

Taxpayer's Name:
Taxpayer's Address:

Taxpayer's Identification No:
Year Involved:
Date of Conference:

LEGEND:

LP =

SC =

X =

Y =

STATE =

DATE A =

DATE B =

DATE C =

DATE D =

YEAR 1 =

ISSUE:

Whether the person authorized to act on behalf of a partnership in a Power of Attorney, Form 2848, that was signed by the tax matters partner (TMP) of the partnership on behalf of the partnership is authorized to execute a Consent to Extend the Time to Assess Tax Attributable to Items of a Partnership, Form 872-P, on behalf of the partnership.

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CONCLUSION:

A person authorized to act on behalf of the partnership in a Power of Attorney executed on behalf of the partnership by a general partner is authorized to execute a Consent to Extend the Time to Assess Tax Attributable to Items of a Partnership, Form 872-P, on behalf of the partnership.

FACTS:

LP is a limited partnership organized under the STATE Uniform Limited Partnership Act prior to YEAR 1. The Agreement of Limited Partnership gave a General Partner

the full and exclusive power and authority on behalf of the Partnership to manage, control, and administer the business and affairs of the Partnership and to otherwise do or cause to be done any and all acts and things deemed by the General Partner to be necessary, advisable or appropriate to the Partnership's investment and engagement in any and all phases of the Partnership business and the ownership and operation of the Partnership Property, with the scope of the General Partner's power and authority encompassing all matters in any way connected with, or incidental to, the foregoing.

With respect to taxes, the agreement specifically provided that the General Partner had "the full and exclusive power and authority":

To make in his sole and absolute discretion on behalf of the Partnership, all elections and decisions available or required under the Internal Revenue Code of 1954 (as amended, (the "Code") and other applicable tax laws, with such power and authority to include specifically the election to be made by the Partnership pursuant to § 754 of the Code; and to take such other action, to execute and deliver such other documents and to do and perform any such other acts and things as may be deemed by the General Partner to be necessary, advisable or appropriate to the conduct of the business and affairs of the Partnership.

In utilizing these powers, the General Partner also had authority "to employ on a temporary or continuing basis outside accountants, attorneys, consultants and others on such terms as the General Partner deems advisable." The agreement further provides:

No person, firm, or corporation dealing with the Partnership will be required to inquire as to the authority of the General Partner to take any action or make any decision. Any and all acts and deeds taken by the General Partner on behalf of the Partnership and permitted by this

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Section . . . will be considered ratified, confirmed and approved by the Limited Partners as the acts and deeds of the Partnership.

The Service examined the partnership return of LP, a limited partnership, for the YEAR 1 tax year. At all relevant times, SC, a corporation taxable under Subchapter S, was the sole General Partner in LP. X was an officer and the sole shareholder of SC. X was also a limited partner, along with others, in LP.

LP timely filed, under extension, a partnership return for YEAR 1 that was signed by X as “general partner.” When X signed the partnership return, X was not a general partner in LP, but was an officer of SC, the sole general partner in LP.¹ Although LP did not designate a TMP, SC was considered the TMP of LP under § 6231(a)(7)(B) because SC was, and continues to be, the sole general partner in LP and was therefore the general partner having the largest profits interest in LP at all times during and since YEAR 1.

During the audit, separate Powers of Attorney were submitted to the Service for X, SC, and LP on Forms 2848, Power of Attorney and Declaration of Representative. X and his spouse authorized Y to represent them in a Form 2848 signed by them on DATE A. SC authorized Y to represent it in a Form 2848 signed by X as an officer of SC on DATE C. LP submitted a Form 2848 on DATE B.

The Form 2848 submitted by LP authorized Y to represent LP. In the space for signatures on the Form 2848 submitted for LP, the name of SC is hand-printed on the first “signature” line, followed by the date and the hand-printed words “Tax Matters Partner” on the lines for “date” and “title (if applicable).” X’s signature is on the second “signature” line, followed by the same date and the hand-printed word “President” on the second lines for “date” and “title (if applicable).” X’s name is hand-printed on the line (“print name”) under his signature. Each of the Forms 2848 bears a note stating:

The tax matters partner/person of a partnership or S corporation is not permitted to authorize representatives to perform certain acts. See the instructions for more information.

The instructions for the Form 2848 used by the LP, SC, and X provide examples of acts that a TMP is authorized to perform on behalf of the partnership, but that cannot be delegated by the TMP to a representative. The acts that “**cannot** be delegated to a representative” included “extending the statute of limitations on assessment of any tax attributable to partnership or subchapter S items under (and affected items) sections 6229 and 6244.”

¹ This memorandum does not address the validity of the return filed for LP and signed by X as “general partner.”

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On DATE D, less than three years after LP's partnership return for YEAR 1 was filed, Y and authorized representatives of the Service executed a Form 872-P, Consent to Extend the Time to Assess tax Attributable to Items of a Partnership, for LP's YEAR 1 tax year. Y signed the Form 872-P for LP in the capacity of an "Authorized Person." The space on the Form 872-P for the signature of a TMP was left blank. The Service sought unsuccessfully to contact X and obtain his signature on behalf of SC, as the TMP for LP, within the three years after LP's partnership return was filed.

LAW AND ANALYSIS:

Applicable law

Section 6229(a) provides that the period for assessing any tax attributable to partnership items (or to affected items) with respect to any partner will not expire before three years from the later of the due date of the entity's return (without regard to extensions) or the date the entity's return is filed.

Section 6229(b)(1)(B) allows the three year period to be extended with respect to all partners at any time during the initial three-year period by an agreement entered into by the Secretary and either the tax matters partner or "any other person authorized by the partnership in writing to enter into such an agreement. "

Reg. § 301.6229(b)-1T, as adopted on March 2, 1987, provides that a partnership can appoint someone other than the TMP to enter into an agreement to extend the three-year period under section 6229(a) on behalf of the partnership by filing a statement with the service center where the partnership return was filed that includes the authorization, the identity of the partnership and the person being authorized to represent the partnership, the partnership year or years affected by the authorization, and the signature of all the persons who were general partners at any time during the year or years for which the authorization is effective.

In Cambridge Research and Dev. Group v. Commissioner, 97 T.C. 287 (1991), the Tax Court held that Reg. § 301.6229(b)-1T was permissive rather than mandatory and that an agreement to extend the three-year period under section 6229(a) was valid when it was signed on behalf of the partnership by a general partner authorized to carry out "partnership business" on behalf of the partnership under Connecticut law and a partnership agreement.

In Amesbury Apartments Ltd. v. Commissioner, 95 T.C. 227 (1990), the Tax Court held that an agreement to extend the three-year period under section 6229(a) was valid when it was signed by a non-partner who had been authorized to represent the partnership on a Form 2848, Power of Attorney and Declaration of Representative, that had been signed by a general partner authorized to act on behalf of the partnership.

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In Medical & Business Facilities Ltd. v. Commissioner, 60 F.3d 207 (5th Cir. 1995), the Fifth Circuit held that an agreement to extend the three-year period under section 6229(a) that was signed by one of several general partners was not a valid agreement because the partnership agreement vested management authority in a management committee without giving individual general partners authority to act on behalf of the partnership.

Analysis

In this case, LP has questioned whether Y, who entered into an agreement with the Service to extend the minimal three-year period under section 6229(a) during which taxes attributable to partnership items (and affected items) of LP could be assessed, had the authority to enter that agreement. We conclude that Y did have that authority.

Section 6229(b)(1)(B) provides two alternative methods for extending the minimal three-year period during which assessments of tax attributable to partnership items or affected items of a partnership subject to the audit provisions in sections 6221 through 6233. First, an extension agreement may be entered into by the Secretary and the tax matters partner for the partnership. Second, an extension agreement may be entered into between the Secretary and “any other person authorized by the partnership in writing to enter into such an agreement. “

Y was a person authorized by LP in writing to enter into an agreement to extend the three-year period under section 6229(a). The Form 2848 submitted by LP was a document in writing that authorized Y to perform any and all acts that LP could perform with respect to the tax matters of LP for the YEAR 1 partnership year. No restrictions in the Form 2848 prohibited LP from authorizing Y or any other person from performing acts, such as entering into extension agreements, on its behalf with respect to the tax matters of LP. Such a restriction would, in fact, have been contrary to the express provisions of section 6229(b)(1)(B).

The relevant Form 2848 in which LP delegated the authority to Y was executed by SC, an act which was within SC’s authority. At all relevant times, SC was the sole general partner in LP and was clearly authorized by the partnership agreement to manage, control, and administer the business and affairs of LP and “to execute and deliver such other documents and to do and perform any such other acts and things as may be deemed by the General Partner to be necessary, advisable or appropriate to the conduct of the business and affairs of the Partnership.” The Service properly relied upon the authority of SC in signing the agreement for LP. SC’s action is to be “considered ratified, confirmed and approved by the Limited Partners as the acts and deeds of the Partnership” within the meaning of the partnership agreement.

Likewise, X, who signed the agreement for SC, as the president of SC, is clearly an officer of SC entitled to sign documents on its behalf. See section 6062.

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The inclusion of the phrase "tax matters partner" on the optional "title" line next to SC's printed signature does not vitiate the effectiveness of SC's signature or its capacity as a general partner. See Monetary II Limited Partnership v. Commissioner, 47 F.3d 342 (9th Cir.), aff'g T.C. Memo. 1992-562 (TMP's signature on line for authorized representative rather than on line designated for TMP did not render the extension agreement invalid); Cambridge Research and Dev. Group v. Commissioner, 97 T.C. 287 (1991)(authorized representative's signature on line designated for the signature of the TMP was of "no moment"); Eversole v. Commissioner, 46 T.C. 56, 61 (1966)(waiver signed by an estate executor without an indication of the executor's capacity was nevertheless valid).

A copy of this technical advice memorandum is to be given to the taxpayer(s). Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Prepared by:

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CC:PA:APJP:B03
March 1, 2001