

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PA:APJP:B01
PLR-138261-05
Date:
September 13, 2005

Legend

Partnership =
User ID =

Dear :

This is in response to your request dated July 18, 2005, for a private letter ruling under section 6031 of the Internal Revenue Code (Code). Specifically, you request a ruling that Partnership's delivery in electronic format of substitute Schedule K-1s that satisfy the requirements of Section 7.1 of Rev. Proc. 2004-62, under procedures that satisfy the consent and notification requirements for electronic delivery of statements set forth in Section 4.5 of Rev. Proc. 2004-58, will satisfy the requirements of section 6031(b) of the Code and Treas. Reg. 1.6031(b)-1T(a)(1).

Facts

Partnership is a calendar-year taxpayer and files Form 1065 with the Internal Revenue Service (Service) electronically. Partnership satisfies its obligations under Section 6031(b) of the Code to furnish information to its members by sending paper Schedule K-1 (Form 1065), Partner's Shares of Income, Deductions, Credits, etc., via United States mail. Partnership has also provided copies of Schedule K-1s to its partners electronically. The Schedule K-1s are provided via a secure intranet system. Under this system, the partners are notified via e-mail that their Schedule K-1s are available for review and downloading. Each partner then logs into this system using his user ID and password and downloads his individual Schedule K-1.

In the future, Partnership would like to furnish substitute Schedule K-1s exclusively in electronic format to its partners who consent to electronic delivery under the procedures

described below. The substitute Schedule K-1s will meet the requirement for substitute forms set forth in section 7.1 of Rev. Proc. 2004-62, 2004-44 I.R.B. 728. In addition, Partnership will follow procedures regarding the delivery of substitute Schedule K-1s that satisfy the consent and notification requirements for electronic delivery of other forms (e.g., Forms W-2) set forth in Section 4.5 of Rev. Proc. 2004-58, 2004-41 I.R.B. 602. Specifically, Partnership will adhere to the following procedures:

1. Partnership will obtain from the recipient partner an affirmative statement of consent, which has not been withdrawn before Partnership furnishes the electronic form, and which shows that the recipient can access the form in the electronic format in which it will be furnished. Partnership will obtain this consent by sending each partner an e-mail requesting that the partner log on to the partnership website which will contain an attachment instructing the partner how to consent to receive the Schedule K-1 electronically.
2. If Partnership changes the hardware or software used to furnish the electronic form, Partnership will notify the recipient of these changes and obtain a new consent prior to furnishing the Schedule K-1.
3. Prior to furnishing the Schedule K-1s electronically, Partnership will provide the recipient partner with a statement that prominently displays the following information:
 - a. that, if the recipient does not consent to receive the statement electronically, a paper copy will be provided;
 - b. the scope and duration of the consent;
 - c. how to obtain a paper copy of the Schedule K-1 after giving consent;
 - d. how to withdraw the consent;
 - e. that the consent may be withdrawn at any time by furnishing the withdrawal in writing (electronically or on paper) to the person whose name appears on the statement;
 - f. confirmation of the withdrawal will also be in writing (electronically or on paper);
 - g. notice of termination (*i.e.*, under what conditions the statements will no longer be furnished to the recipient);
 - h. procedures to update the recipient's information;
 - i. a description of the hardware and software required to access, print and retain the statement, and a date the statement will no longer be available on the partnership website.

Law

Furnishing of Schedule K-1s

Section 6031(a) of the Code provides, in part, that every partnership shall make a return for each taxable year, stating specifically the items of its gross income and the

deductions, and such other information as the Secretary may by forms and regulations prescribe, and shall include in the return the names and addresses of the individuals who would be entitled to share in the taxable income if distributed and the amount of the distributive share of each individual.

Section 6031(b) of the Code provides, in part, that each partnership required to file a return for any partnership taxable year shall (on or before the day on which the return for such taxable year was required to be filed) furnish to each person who is a partner or who holds an interest in such partnership as a nominee for another person at any time during such taxable year a copy of such information required to be shown on such return as may be required by regulations.

Section 1.6031(b)-1T(a) of the Income Tax Regulations (regulations) provides, in part, that each partnership required to file a return for any partnership taxable year shall (on or before the day on which the return for such taxable year is required to be filed) furnish to each person who is a partner or who holds an interest in such partnership as a nominee for another person at any time during such taxable year a copy of such information required to be shown on such return as may be required by regulations.

The 2004 Instructions for Form 1065, U.S. Return of Partnership Income, provides, in part, that the partnership furnish a copy of Schedule K-1 to each partner.

Substitute Schedule K-1s

Rev. Proc. 2004-62 provides guidance on the requirements for forms accepted as substitutes for official Internal Revenue Service forms. Section 7.1 of Rev. Proc. 2004-62 sets forth specific guidelines for substitute Schedule K-1s. The Note to Section 7.1.1 of Rev. Proc. 2004-62 provides, in part, that Substitute schedules K-1 should be as close as possible to exact replicas of copies of the official IRS schedules. The 2004 Instructions for Form 1065, U.S. Return of Partnership Income, provides, in part, that a partnership does not need IRS approval to use a substitute Schedule K-1 if it is an exact copy of the IRS schedule.

Electronic Furnishing of Statements

Section 6031 of the Code and Treasury Regulations are silent on whether electronic delivery of Schedule K-1s is permitted. Section 31.6051-1(j) of the Employment Tax Regulations and Section 4.5.1 of Rev. Proc. 2004-58, 2004-41 I.R.B. 602 set forth procedural consent and notification requirements for furnishing Form W-2, Wage and Tax Statement.

Analysis

Section 6031(b) and Section 1.6031-1T(a) provide that each partnership must furnish to each person who is a partner or who holds an interest in such partnership as a nominee

for another person at any time during the taxable year a copy of information required to be shown on the partnership return, but does not prescribe the method of furnishing such information. The Service has issued regulations and revenue procedures authorizing the electronic furnishing of Forms W-2, providing for procedural consent and notification that satisfy the needs of tax administration in ensuring that recipients consent to receive these written statements electronically and that recipients actually receive these statements electronically. Partnership represents that it will follow the procedures in furnishing electronic Schedule K-1s to its partners that satisfy the procedural consent and notification requirements applicable to Forms W-2, as set forth in Rev. Proc. 2004-58. Moreover, Partnership represents that the substitute Schedule K-1s furnished to its partners will meet the requirements for substitute forms set forth in Section 7.1 of Rev. Proc. 2004-62. If the Partnership electronically furnishes substitute Schedule K-1s that satisfy the requirements of Section 7.1 of Rev. Proc. 2004-62, under procedures that satisfy the consent and notification requirements for electronic delivery of statements set forth in Section 4.5 of Rev. Proc. 2004-58, the Partnership will satisfy the requirements of section 6031(b) of the Code and Treas. Reg. 1.6031(b)-1T(a)(1).

Conclusion

Based on the information provided and the representations made, we conclude Partnership's delivery in electronic format of substitute Schedule K-1s that satisfy the requirements of Section 7.1 of Rev. Proc. 2004-62, under procedures that satisfy the consent and notification requirements for electronic delivery of statements set forth in Section 4.5 of Rev. Proc. 2004-58, will satisfy the requirements of section 6031(b) of the Code and Treas. Reg. 1.6031(b)-1T(a)(1). The Partnership will not need Service approval to use a substitute Schedule K-1 if it uses an exact copy of the Service's Schedule K-1.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

James Coffey Gibbons
Branch Chief, Administrative Provisions & Judicial
Practice, Branch 1
(Procedure & Administration)

cc: