

ID: CCA-729855-08

Number: **200848059**

Office:

Release Date: 11/28/2008

UILC: 6901.01-00

From:

Sent: Tue 7/29/2008 8:55 AM

To:

Cc:

Subject: RE: transferee case that may [REDACTED]

Since our last communication this issue has been resolved with our transferee liability branch. We recommend [REDACTED]

A TEFRA partnership can be a transferee. Under the transferee liability procedures, a "transferee" is any transferee of property who is liable at law or in equity for the taxpayer-transferor's tax liability. IRC § 6901(a)(1)(A); IRM 4.10.13.3.6. The existence and the extent of the transferee liability are determined under the law of the state in which the transfer occurred. If a corporation has unpaid income taxes and liquidated and distributed its assets to its sole shareholder, a TEFRA partnership, under state law the partnership could be a transferee of the corporation-transferor. See Treas. Reg. § 301.6901-1(b) ("transferee" includes shareholder of dissolved corporation). Under state law a partnership is an entity, separate from its partner. A partnership may incur liabilities and debts, acquire partnership property, and have actions brought against it.

The partnership here can be directly liable for the transferee assessment by virtue of the transfer. This transferee liability situation is comparable to partnership employment tax assessments, to which the TEFRA procedures do not apply. The 30-day letter and any resulting notice of liability of the partnership would be in the name of (and issued to) the partnership. If the partnership transferred any of the transferred assets to any partner (even a limited partner), a 30-day letter and notice of liability should be issued to such partner in the partner's name as transferee of the transferee.

When preparing the recomputation of tax on Form 4549 the Service would show the transferor's name, SSN, and tax period on all schedules since the recomputed tax is actually the transferor's. See IRM 8.7.5.6(3).

Note, after the assessment against the partnership, the Service can take administrative collection action (e.g. lien, levy) against the partnership itself. Furthermore, the government can enforce a tax lien and take administrative levy action against a general partner based on the assessment, notice and demand directed to the partnership. Upon assessment against the partnership, the general partners will become derivatively liable under state law without the need for separate assessments. Cf. CC-2005-003, January 19, 2005 (confirming that United States v. Galletti, 124

S.Ct. 1548 (2004), does not alter the Service's longstanding position that it may administratively collect a partnership's employment taxes from general partners based on their derivative liability under state law).