

Office of Chief Counsel
Internal Revenue Service
memorandum

Number: **201425011**

Release Date: 6/20/2014

CC:PA:01:MEHara
POSTF-123972-12

Third Party Communication: None
Date of Communication: Not Applicable

UICL: 6063.00-00

date: February 21, 2014

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subject: Signatures on Partnership Returns

This Chief Counsel Advice responds to your request for assistance. This advice may not be used or cited as precedent.

LEGEND

State A =
State B =
Country C =
Foreign Entity =

ISSUE

Whether a Form 1065, *U.S. Return of Partnership Income*, that is not signed by a general partner or a limited liability company member manager is a valid return for purposes of starting the running of the period of limitations on assessment.

CONCLUSION

A Form 1065 that is not signed by a general partner or a limited liability company member manager is not a valid partnership return, *Agri-Cal Venture Associates v. Commissioner*, T.C. Memo 2000-271; *Beard v. Commissioner*, 82 T.C. 766, 777 (1984), *aff'd*, 793 F.2d 139 (6th Cir. 1986). Although the partnership return is invalid, the return that starts the running of the limitations period at issue is that of the taxpayer whose

liability is being assessed; not that of the partnership or limited liability company whose return might also report the transaction that gives rise to the liability. I.R.C. § 6501(a); *Bufford v. Commissioner*, 506 U.S. 523 (1993).

FACTS

The Service received a Form 1065 for a State A LLC.¹ The State A LLC is owned % by a State B entity and % by a Country C foreign entity. The State B entity is incorporated as a “corporation sole” and claims to have no members.² It is unclear who owns the State B entity. The foreign entity is owned by an individual taxpayer and a trust which the taxpayer appears to control.

The preparer signature line for the Form 1065 is signed by a tax preparer. Someone signed the partnership signature line as “Foreign Entity,” the name of the foreign entity. The individual taxpayer, who generally acted for the foreign entity, implied in an interview that he did not file the return and that someone from the tax preparer’s office must have signed the partnership signature line.

LAW AND ANALYSIS

I. The State A LLC Partnership return is not valid because it was not signed by a partner or a limited liability company member.

Who must sign partnership returns

I.R.C. § 6011(a) sets forth the general rule that “[e]very person required to make a return or statement shall include therein the information required by such forms or regulations.”

¹ An LLC can be taxed as either a partnership or a corporation. Further, an LLC owned by a single-member owner can elect to be disregarded for federal income tax purposes, filing neither a corporate or partnership return. See Treas. Reg. § 301.7701-3(b)(1)(ii).

² A taxpayer may not exclude income from taxation based on the argument that the taxpayer’s income belongs to a “corporation sole” created by the taxpayer for the purpose of avoiding taxes on the taxpayer’s income. Rev. Rul. 2004-27, 2004-1 C.B. 625. In addition to having to pay the actual tax due plus statutory interest, individuals who claim tax benefits on their returns based on a “corporation sole” scheme or other frivolous arguments face substantial civil and criminal penalties. Potentially applicable civil penalties include: (1) the I.R.C. § 6662 accuracy-related penalty, which is equal to 20 percent of the amount of taxes the taxpayer should have paid; (2) the I.R.C. § 6663 penalty for civil fraud, which is equal to 75 percent of the amount of taxes the taxpayer should have paid; (3) a \$5,000 penalty under I.R.C. § 6702 for filing a frivolous return; and (4) a penalty of up to \$25,000 under I.R.C. § 6673 if the taxpayer makes frivolous arguments in the United States Tax Court.

Taxpayers relying on this scheme also may face criminal prosecution for: (1) attempting to evade or defeat tax under I.R.C. § 7201 for which the penalty is a fine of up to \$100,000 and imprisonment for up to 5 years; or (2) making false statements on a return under I.R.C. § 7206 for which the penalty is a fine of up to \$100,000 and imprisonment for up to 3 years.

I.R.C. § 6063, entitled "Signing of partnership returns," provides that "[t]he return of a partnership made under section 6031 shall be signed by any one of the partners. The fact that a partner's name is signed on the return shall be prima facie evidence that such partner is authorized to sign the return on behalf of the partnership."

Treas. Reg. § 1.6063-1(a) provides that "[r]eturns, statements, and other documents required to be made by partnerships under the provisions of subtitle A or F of the Code, or the regulations thereunder, with respect to any tax imposed by subtitle A of the Code shall be signed by any one of the partners."

Limited Liability Company

Neither the Internal Revenue Code (Code) nor Treasury Regulations deal with signatures by LLC members, however, the instructions for both the Form 1065 and IRS Publication 3402, *Taxation of Limited Liability Companies*, (March 2010) state that "only a member manager of an LLC can sign the partnership tax return. ... A member manager is any owner of an interest in the LLC who, alone or together with others, has the continuing authority to make the management decisions necessary to conduct the business for which the LLC was formed. If there are no elected or designated member managers, each owner is treated as a member manager." Pub. 3402 at p. 2.

The 2012 Instructions for Form 1065 at page 4 provides:

Who Must Sign

General Partner or LLC Member Manager

Form 1065 is not considered to be a return unless it is signed by a general partner or LLC member manager. When a return is made for a partnership by a receiver, trustee or assignee, the fiduciary must sign the return, instead of the general partner or LLC member manager. Returns and forms signed by a receiver or trustee in bankruptcy on behalf of a partnership must be accompanied by a copy of the order or instructions of the court authorizing signing of the return or form.

In this case, the partnership signature line is signed "Foreign Entity," the name of the foreign entity, and not the name of the individual taxpayer that owns it or controls the trust. The individual taxpayer denies signing the return and alleges that someone from the tax preparer's office must have signed the partnership signature line. Because the partnership return was not signed by a partner or LLC member manager, the Form 1065 is invalid. See *Agri-Cal Venture Associates v. Commissioner*, T.C. Memo 2000-271 (a Form 1065 not signed by any partner was not a valid partnership return).³

³ See *Weiner v. United States*, 255 F.Supp.2d 624, 645 (S.D. Tex. 2002) ("The IRC and case law provide no authority approving the substitution of the signature of an authorized agent who is not a partner on a partnership return"); *Burford Oil Co. v. Comm'r of Internal Revenue*, 153 F.2d 745, 746 (5th Cir. 1946)(requirement that a corporate tax return must be sworn to by the president, vice president or other

An officer, employee of a partnership or LLC, or the return preparer of the partnership return is not a permissible signatory on the taxpayer signature line of the partnership's tax return.⁴ The Code, Treasury Regulations and IRS guidance all require, and only make reference to, the signature of a partner or member manager on the Form 1065.⁵ In *Beard v. Commissioner*, 82 T.C. 766, 777 (1984), *aff'd*, 793 F.2d 139 (6th Cir. 1986), the Tax Court listed four criteria for determining "whether a document is sufficient for statute of limitations purposes."⁶ One of the criteria is that "the taxpayer must execute the return under penalties of perjury." See also *Lucas v. Pilliod Lumber Co.*, 281 U.S. 245, 249 (1930) ("Here assent that the statute [of limitations] might begin to run was conditioned upon the presentation of a return duly sworn to."). Thus, a partnership return signed by a return preparer on the partnership signature line is not a valid return.

Another corollary issue is whether the return is invalid because the return is signed with the name of the foreign entity, rather than with the name of the individual person. Although we could find no case directly on point, it is our view that the signer should sign by writing his name, rather than the name of the business entity. This is because only a natural person may sign tax returns, as opposed to an entity. A business entity must act through its authorized representatives. In other contexts, inserting the name of

principal officer and by the treasurer, assistant treasurer, or chief accounting officer, is mandatory; return signed only by treasurer is not valid); *Elliott v. Comm'r of Internal Revenue*, 113 T.C. 125, 128–29 (1999) (return that did not comply with signature requirements was not valid return and did not trigger running of limitations period for assessment).

⁴ The authority to sign a return or a superseding return may not be delegated to another person unless this person falls within the authorized group (e.g., a partner may not delegate the authority to a non-partner to sign a return).

Further under Treas. Reg. §601.504(a)(6) the Filing of a Power of Attorney does not authorize the recognized representative to sign a tax return on behalf of the taxpayer unless such act is both—

(i) Permitted under the Internal Revenue Code and the regulations thereunder (e.g., the authority to sign income tax returns is governed by the provisions of § 1.6012-1(a)(5) of the Income Tax Regulations);

(ii) Specifically authorized in the power of attorney (Use of this exception is extremely limited). Treas. Reg. § 1.6012-1(a)(5) permits a recognized representative to sign a tax return on behalf of the taxpayer only in the following circumstances:

- a) Disease or Injury,
- b) Continuous absence from the U.S.(including Puerto Rico), for a period of at least 60 days prior to the date required by law for filing the return, or
- (c) Specific permission is requested of and granted by the IRS for other good cause.

⁵ Where the partner or member-manager is not a natural person (that is, the partner is a limited liability company, or trust), an authorized official of this entity signs either for the partnership or LLC. And where all of the partners or member-managed LLCs are other business entities, one must look to see who is authorized to sign for the entity.

⁶ 82 T.C. at 777. For a document to be considered a valid return under *Beard*, the document must: (1) contain sufficient data to allow calculation of tax, (2) purport to be a return, (3) represent an honest and reasonable attempt to satisfy the requirements of the tax law, and 2) be signed under penalty of perjury.
Id.

business entity on a signature line did not operate as a signature. See *Kroeze v. Chloride Group Limited*, 572 F.2d 1099, 1105-06 (5th Cir. 1978) (name of brokerage firm typed in the space provided on the transmittal letter for the name of the registered owner did not constitute a signature); *Elmer Fox & Co. v. Commercial Union Ins. Co. of New York*, 274 F.Supp 235, 239-40 (D.C. Colo. 1967) (rubber stamp endorsement with words "For deposit only" with name and address of company is not a signature). The primary object of a written signature is identification, and this goal is subverted when a company name is used rather than the person who signed the document. See *Sinnot v. Louisville & N.R. Co.*, 104 Tenn. 233, 56 S.W. 836, 838 (Tenn. 1900).

II. Although the partnership return is invalid, the return that starts the running of the limitations period at issue is that of the taxpayer whose liability is being assessed, and not that of the partnership or limited liability company whose return might also report the transaction that gives rise to the liability.

Partners' Return Starts Limitation Period for Partner

The return of a pass-through entity, such as a partnership, is not the "return" of the partner for purposes of starting the assessment period of I.R.C. § 6501(a). The return that starts the running of the limitations period at issue is that of the taxpayer whose liability is being assessed, and not that of the partnership or limited liability corporation whose return might also report the transaction that gives rise to the liability. See *Siben v. Commissioner*, 930 F.2d 1034, 1035 (2d Cir.), *cert. denied*, 502 U.S. 963 (1991).

Similarly, in *Bufferd v. Commissioner*, 506 U.S. 523 (1993), the Supreme Court held that the limitations period for assessing the income tax liability of an S corporation shareholder runs from the date on which the shareholder's return is filed, not the return of the S corporation. The Court reasoned that then S corporation was a pass-through entity with its income, losses, deductions, and credits flowing through and being attributable to the individual shareholders. The Taxpayer Relief Act of 1997 incorporated the Supreme Court's ruling in *Bufferd* in the statutory language of Section 6501(a) by providing that a return for purposes of the statute of limitations on assessment is "the return required to be filed by the taxpayer and does not include a return of any person from whom the taxpayer has received any items of income, gain, loss, deduction or credit."⁷

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.

Please call (202) 622-4910 if you have any further questions.

⁷ I.R.C. § 6501(a), as amended by the Taxpayer Relief Act of 1997, § 1248(a), for tax years after August 5, 1997.