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From: [REDACTED]

Sent: Friday, July 12, 2019 1:28:41 PM

To: [REDACTED]

Cc: [REDACTED]

Bcc:

Subject: RE: Valid Partnership Return? POSTF-112872-19

Hi

You asked us whether a partnership return signed by the CFO of the corporation that is the sole general partner of the partnership in question is a valid return under the Beard test, where the signer signed his e-file Signature Authorization (Form 8879-PE) using a different title he holds, rather than in his capacity as the CFO of the partner corporation. All else being proper, the return is valid.

For a return to be valid, the taxpayer must execute the return under penalties of perjury. Beard v. Commissioner, 82 T.C. 766,777 (1984). A partnership return must be signed by one of the partners. I.R.C. § 6063. A corporation's return may be signed by enumerated officers and other officers duly authorized to do so, and an officer's signature is prima facie evidence of their authority to sign. I.R.C. § 6062. Generally, authority to sign a tax document on behalf of an entity follows authority to sign a return for that entity. Therefore, a corporation officer's signature of a partnership return, where the corporation is a partner of the partnership, is prima facie valid, and the Service does not have to verify that the signee is authorized to sign.

As part of the e-file process, the IRS requires electronic return originators (EROs) to have filers complete forms 8879, e-file Signature Authorization. These forms are not filed with the IRS, but the EROs are required to maintain them as records, evidencing the authority to file the returns.

Courts have held that if a signee was actually the correct individual to sign a return, the fact that a return was not signed in the correct capacity will not render the return invalid. In *Consolidated Apparel Co.*, an individual signed a corporate return as president of the corporation. For the year at issue, an officer such as the president and the treasurer were required to sign. The court held that because the signer was in fact both president and treasurer, the return was valid, explaining, "[l]iterally then, the return was signed by the petitioner's president and treasurer. Perhaps [Petitioner] should have signed twice, once as president and again as treasurer, but that, we think, is not a serious defect. In our opinion the return as filed substantially complied with the requirements of the statute

as to verification.” *Consolidated Apparel Co. v. Commissioner*, 17 T.C. 1570 (1952), rev’d in part on other issues, 207 F.2d 580 (7th Cir. 1953); see also, *Ethel D. Co. v. Commissioner*, 27 B.T.A. 25 (1932) (“The facts are clear that, while J. R. Murphy held the official position of assistant secretary and signed the return as such, he, in fact, was the person responsible for petitioner’s financial matters . . . [T]he only irregularity is that the return is sworn to by the president and assistant secretary instead of assistant treasurer, and we have found that to all intents and purposes the assistant secretary was the assistant treasurer”); *J. F. Anderson Lumber Co. v. Commissioner*, 15 B.T.A. 475 (1929).

Here, we do not have the complete facts to be certain that the CFO was an officer of the corporation authorized to sign the partnership return on the corporation’s behalf. His signing of the return would be prima facie evidence of this authority. Therefore, in the absence of evidence that he lacks authority or did not in fact sign the return (through e-file authorization), the return is valid. The incorrect title on the Form 8879-PE does not change this, for two reasons. First, a Form 8879-PE is not attached to a return or otherwise filed with the IRS, and its completeness is not part of deeming a return valid. Its defects could be evidence of forgery or unauthorized filing should such an argument arise, but there is no such evidence or argument here. (For this reason, other defects in the Form 8879-PE, such as the missing date next to the CFO’s signature, also do not themselves invalidate the return.) Second, just as an incorrect title is not fatal to a return itself, it is all the more so not fatal to the Form 8879-PE, which is simply his authorization to an ERO to enter his PIN for him; so long as the signer has actual authority to sign the return, his e-file is valid.

Please let me know if you have additional questions.

Thanks.