

Office of Chief Counsel  
Internal Revenue Service  
**memorandum**

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to:

(Large Business & International)

from: , Procedure & Administration, Branch 6  
Procedure & Administration, Branch 6

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subject:

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

**ISSUE**

If the designated individual (DI) of an entity partnership representative (PR), who was named on the 2018 and 2019 Forms 1065, *U.S. Return of Partnership Income*, is different from the individual who signed the Forms 872-M, *Consent to Extend the Time to Make Partnership Adjustments*, are the extensions invalid?

**SHORT ANSWER**

Yes. Section 6223(a) provides that the PR has the sole authority to act on behalf of the partnership. The extensions are invalid because they were not signed by the designated PR/DI.

**FACTS**

A. 2018 and 2019 Forms 1065

The partnership in this case, , filed Form 1065, *U.S. Return of Partnership Income*, for the taxable period ending December 31, 2018 (the 2018 Form 1065). did not elect out of the Bipartisan Budget Act of 2015 (BBA)

audit rules. The 2018 Form 1065, Schedule B, identifies the designated PR as an individual, \_\_\_\_\_, and the DI for the PR as \_\_\_\_\_. The taxpayer identification number for the designated PR that was provided was \_\_\_\_\_, which corresponds to an entity, \_\_\_\_\_.

The following year, \_\_\_\_\_ filed its Form 1065 for the taxable period ending December 31, 2019 (the 2019 Form 1065). \_\_\_\_\_ did not elect out of the BBA audit rules. The 2019 Form 1065, Schedule B, identifies the PR as an entity, \_\_\_\_\_, and the DI for the PR as \_\_\_\_\_.

#### B. Forms 872-M

On October 27, 2021, \_\_\_\_\_ signed a Form 872-M, *Consent to Extend the Time to Make Partnership Adjustments*, for the Partnership for the 2018 tax year. \_\_\_\_\_ title was listed as the CFO and Treasurer of \_\_\_\_\_. The form identified \_\_\_\_\_ as the PR and \_\_\_\_\_ as the DI for the PR. The form purported to extend the section 6235(a)(1) period of limitations to make partnership adjustments until September 13, 2023.

On November 3, 2022, \_\_\_\_\_ signed a second Form 872-M for the 2018 and 2019 tax years. The form identified \_\_\_\_\_ as the PR and \_\_\_\_\_ as the DI for the PR. The form purported to extend the section 6235(a)(1) period of limitations to make partnership adjustments until September 15, 2024.

On April 19, 2024, \_\_\_\_\_ signed a third Form 872-M for the 2018 and 2019 tax years. \_\_\_\_\_ title was listed as the CFO and Treasurer of \_\_\_\_\_. The form identified \_\_\_\_\_ as the PR and \_\_\_\_\_ as the DI. The form purported to extend the section 6235(a)(1) period of limitations to make partnership adjustments until December 31, 2024.

On August 6, 2024, \_\_\_\_\_ signed a fourth Form 872-M for the 2018 and 2019 tax years. The form identified \_\_\_\_\_ as the PR and \_\_\_\_\_ as the DI. The form purported to extend the section 6235(a)(1) period of limitations to make partnership adjustments until April 30, 2026.

#### LAW AND ANALYSIS

The BBA audit rules apply to all partnership returns filed on Form 1065, unless the partnership makes a valid election out of BBA under section 6221(b). A valid election must be made on a timely filed Form 1065. Section 6221(b)(1)(D)(i). \_\_\_\_\_ did not opt to elect out of the BBA audit rules on its 2018 or 2019 Forms 1065. Therefore, the BBA audit rules apply to the 2018 and 2019 taxable years.

### A. The Partnership Representative

Under BBA, the PR has the sole authority to act on behalf of the partnership. Section 6223(a). A partnership must designate a PR for each tax year that is subject to the BBA audit rules. Treas. Reg. § 301.6223-1(a). A PR may be designated on the Form 1065 or Form 8979. Treas. Reg. § 301.6223-1(c)(2). When a partnership designates an entity as its PR, the partnership must also name a DI for the PR. Treas. Reg. § 301.6223-1(b).

There may be only one PR and one DI for a partnership taxable year at any time. Treas. Reg. § 301.6223-1(a). The designation of a PR for a partnership taxable year remains in effect until the PR resigns, the partnership revokes the designation, or the Service determines that the designation no longer has effect. *Id.* Form 8979 is used to designate or revoke a PR or DI, for the PR or DI to resign, or for the Service to designate a PR/DI where no PR/DI is in effect. For BBA partnerships, the PR, or DI if the PR is an entity, has the sole authority to sign a Form 872-M.

designated as its PR for the 2018 tax year. However, the taxpayer identification number listed for belongs to . was named as the DI for . For the 2019 tax year, designated as the entity PR and named as the DI to act on behalf of the entity PR.

#### 1. Forms 872-M for 2018 and 2019

The initial Form 872-M purported to extend the period of limitations until September 13, 2023, for the 2018 tax year. This Form 872-M was invalid because it was signed by . The PR/DI, had the sole authority to sign the extension. never submitted a Form 8979 to change the PR/DI for the 2018 tax year to ; therefore, had no authority to sign the Form 872-M form to extend the period of limitations until September 13, 2023.

The second Form 872-M purported to extend the period of limitations until September 15, 2024, for the 2018 and 2019 tax years. This Form 872-M was invalid because it was signed by . had the sole authority to sign for 2018 and had the sole authority to sign on behalf of for 2019. never submitted a Form 8979 to change the PR/DI for the 2018 or 2019 tax years to ; therefore, had no authority to sign the Form 872-M form to extend the period of limitations until September 15, 2024.

The third Form 872-M purported to extend the period of limitations until December 31, 2024, for the 2018 and 2019 tax years. This Form 872-M was invalid because it was signed by . had the sole authority to sign for 2018 and had the sole authority to sign on behalf of for 2019. never submitted a Form 8979 to change the PR/DI for the 2018 or 2019 tax years to

; therefore, had no authority to sign the Form 872-M form to extend the period of limitations until December 31, 2024.

The fourth Form 872-M purported to extend the period of limitations until April 30, 2026, for the 2018 and 2019 tax years. This Form 872-M was invalid because it was signed by . had the sole authority to sign for 2018 and had the sole authority to sign on behalf of for 2019.

never submitted a Form 8979 to change the PR/DI for the 2018 or 2019 tax years to ; therefore, had no authority to sign the Form 872-M form to extend the period of limitations until April 30, 2026.

### B. Period of Limitations

Under section 6235(a), the Service generally has three years from the date a return is filed or its original due date, whichever comes later, to make a proposed adjustment to a partnership return. The section 6235(a) date can be extended by agreement pursuant to section 6235(b).

#### 1. 2018 Tax Year

The 2018 Form 1065 was filed on September 13, 2019. The original due date was March 15, 2019. The filing date is the later of the two dates; therefore, we add three years to that date to arrive at the section 6235(a)(1) date, which was September 13, 2022. This is date by which the Letter 5892, *Notice of Proposed Partnership Adjustment* (NOPPA), was required to be mailed by. Section 6231(b)(1). The NOPPA has not been mailed due to the reliance on the Forms 872-M that were signed by and , which purportedly extended the section 6235(a)(1) period of limitations through April 30, 2026.

#### 2. 2019 Tax Year

The 2019 Form 1065 was filed on September 14, 2020. The original due date was March 15, 2020. The filing date is the later of the two dates; therefore, we add three years to that date to arrive at the section 6235(a)(1) date, which was September 14, 2023. This is date by which the Letter 5892, *Notice of Proposed Partnership Adjustment* (NOPPA), was required to be mailed by. Section 6231(b)(1). The NOPPA has not been mailed due to the reliance on the Forms 872-M that were signed by and , which purportedly extended the section 6235(a)(1) period of limitations through April 30, 2026.

### CONCLUSION

All of the Forms 872-M were invalid because they were signed by individuals that were not the designated PR/DI. Therefore, the period of limitations for the 2018 tax year

expired on September 13, 2022, and the period of limitations for the 2019 tax year expired on September 14, 2023.

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If you have any questions, please contact \_\_\_\_\_ at \_\_\_\_\_.