

Office of Chief Counsel
Internal Revenue Service
memorandum

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date: March 18, 2003

to: Area Director, Appeals [REDACTED]

from: Associate Area Counsel, ([REDACTED])
Washington, D.C.

subject: [REDACTED]; TEFRA statute of limitations

This is in response to your memorandum dated December 20, 2002 in which you request our advice regarding the effect of the statute of limitations on adjustments to partnership items allocated to [REDACTED] from [REDACTED] Limited Partnership for calendar years [REDACTED] and [REDACTED]. Further, you request our advice with respect to possible actions you may take if we conclude that the statute of limitations precludes you from making adjustments for the partnership items. This memorandum should not be cited as precedent.

ISSUE:

Whether, under the circumstances described below, the period of limitations for making an assessment of tax with respect to partnership adjustments has expired.

FACTS:

You currently have before you [REDACTED] income tax returns for calendar years [REDACTED] through [REDACTED]. During calendar years [REDACTED] and [REDACTED], [REDACTED] was a partner in [REDACTED] Limited Partnership.

On [REDACTED], the Associate Chief, [REDACTED] Appeals Office, and [REDACTED] entered into a settlement agreement with respect to [REDACTED] Limited Partnership for calendar years [REDACTED] through [REDACTED] and executed a Settlement Agreement for Partnership Adjustments (Form 870-P(AD)). The adjustments agreed to are as follows:

[REDACTED]

You are responsible for assessing the tax due.

[REDACTED] and the Service agreed to extend the time to assess income tax for calendar years [REDACTED] through [REDACTED] until [REDACTED] using Form 872 (Consent to Extend the Time to Assess Tax). All of the Forms 872 executed expressly provided that the agreements were to apply to tax attributable to partnership items.

In [REDACTED], [REDACTED] and the Service executed a Form 872-A (Special Consent to Extend the Time to Assess Tax) for calendar years [REDACTED] through [REDACTED]. The Form 872-A did not expressly provide that it was to apply to tax attributable to partnership items.

DISCUSSION:

I.R.C. § 6501(c)(4) provides that the Service and a taxpayer may agree to an extension of time to assess income tax by executing a written consent before the initial period of assessment has expired. I.R.C. 6501(n)(2) cross-references section 6229: "For extension of period in the case of partnership items (as defined in section 6231(a)(3)), see section 6229."

I.R.C. § 6229(b)(3) provides:

Any agreement under section 6501(c)(4) shall apply with respect to the period described in subsection (a) only if the agreement expressly provides that such agreement applies to tax attributable to partnership items.

I.R.C. § 6229(a) provides a 3-year minimum period for assessing tax attributable to partnership items. Rhone-Poulenc Surfactants and Specialities v. Commissioner, 114 T.C. 533 (2000) appeal dismissed and remanded 249 F.3d 175 (3d Cir. 2001).

The Tax Court described the relationship between these provisions as follows:

A valid extension pursuant to section 6501(c)(4) operates to extend the period of limitations on assessments and collections with regard to only those taxes that both the Secretary and the taxpayer

explicitly agree to in writing. Contract principles are pivotal in determining the existence and scope of that agreement because section 6501(c)(4) requires a written agreement. Section 6229(b)(3) imposes a default rule for purposes of determining whether an agreement encompasses assessments that are attributable to partnership items. It provides that any agreement under section 6501(c)(4) shall apply to partnership-level adjustments only if the agreement expressly provides that it applies to tax attributable to partnership items.

Rhone-Poulenc Surfactants and Specialities, 114 T.C. at 549-50 (citations omitted).

Your concern is that the Form 872-A executed in [REDACTED] may not have extended the time for assessing tax attributable to the adjustments from [REDACTED] Limited Partnership because it did not expressly provide that it was to apply to tax attributable to partnership items.

The term "partnership item" is defined at I.R.C. 6231(a)(3) to mean: "any item required to be taken into account for the partnership's taxable year under any provision of subtitle A to the extent regulations prescribed by the Secretary provide that, for purposes of this subtitle, such item is more appropriately determined at the partnership level than at the partner level." The adjustments regarding [REDACTED] Limited Partnership were partnership items.

On [REDACTED], the Associate Chief, [REDACTED] Appeals Office, and [REDACTED] entered into a settlement agreement when they signed the Form 870-P(AD). The settlement agreement converted all partnership items to nonpartnership items. I.R.C. § 6231(b)(1)(C).

Once partnership items convert to nonpartnership items, the Service has a 1-year minimum period to assess tax attributable to the converted item. I.R.C. 6229(f); Rhone-Poulenc Surfactants and Specialities v. Commissioner, 114 T.C. 533 (2000) appeal dismissed and remanded 249 F.3d 175 (3d Cir. 2001). Under I.R.C. § 6501(c)(4), the Service and a taxpayer may agree to an extension of time to assess a tax by executing a written consent before the initial period of assessment has expired.

It was after the partnership items had converted to nonpartnership items that [REDACTED] and the Service executed Form 872-A. Thus, there was no need to refer to partnership items in the agreement on Form 872-A.

CONCLUSION:

Under the circumstances described above, the period of limitations for making an assessment of tax with respect to partnership adjustments has not expired.

If you have a question, please contact Wilton A. Baker. His telephone number is (202) 634-5403 ext. 269.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

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