



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

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INTERNAL REVENUE SERVICE NATIONAL OFFICE LEGAL ADVICE

MEMORANDUM FOR ASSOCIATE AREA COUNSEL
CC:LM:HMT:WAS

FROM: Susan Mosley,
Senior Technician Reviewer CC:PA:APJP:Br03

SUBJECT: Language Revision on Notice of Beginning of Administrative Proceeding.

This Chief Counsel Advice responds to your request for advice dated March 13, 2002. In accordance with I.R.C. § 6110(k)(3), this Chief Counsel Advice should not be cited as precedent.

ISSUE

Whether language in the current Notice of Beginning of Administrative Proceeding should be clarified.

CONCLUSIONS

We recommend that the new form be clarified as indicated below.

FACTS

A new version of the Notice of Beginning of Administrative Proceeding Letter 1787 was published in March 2001. The prior version of this form was issued November 1989. Questions have arisen as whether the changes from the prior version are appropriate. Consequently, your office asked that we review the form.

LAW AND ANALYSIS

Internal Revenue Code section 6223(a)(1) requires the Service to mail to each partner whose name and address is furnished to the Service "notice of the beginning of an administrative proceeding at the partnership level with respect to a partnership item." This signifies that the Service is beginning an examination of partnership items under the Unified Audit and Litigation Procedures of I.R.C. §§ 6221 through 6233 ("TEFRA"). See Abelein v. United States, 2001-2 U.S. Tax

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Cas. (CCH) P50,592; 88 A.F.T.R.2d (RIA) 5392 (W.D. Wash 2001) (A TEFRA partnership examination constitutes an “administrative proceeding”); First Western Gov’t Securities v. U.S., 796 F.2d 356, 360-61 (10th Cir. 1986) (An examination is an “administrative proceeding” pertaining to tax administration.); but see Mallas v. U.S., 993 F.2d 1111, 1122 (4th Cir. 1993) (non-TEFRA context).

Based on the above, the notice of the beginning of an administrative proceeding (“NBAP”) must notify each partner entitled to notice of the beginning of an administrative proceeding at the partnership level with respect to partnership items. The new form notes that the Service is required to send a notice, but does not unambiguously explain that it constitutes such a notice. Nor does it precisely mirror the operative language of the statute. The first paragraph of the prior version of the form unequivocally satisfied these requirements.

The new form does not explain that the initiation of an administrative proceeding means that the Service is beginning an examination of partnership items. We believe that this explanation should be included, since some partners may not otherwise understand the significance of the notice.

In addition, unlike the old form, the new form does not provide for an IRS employee identification number to be sent to the taxpayer. This is required under section 3705(b) of the Internal Revenue Service Restructuring and Reform Act of 1998. The remaining language in the form is acceptable.

We note that the social security number of the partner to whom the notice is sent is included on the notice. This is appropriate except when a generic Tax Matters Partner Notice is sent to the Tax Matters Partner at the address of the partnership, since no specifically named partner will be listed.

The NBAP is not used to set up the initial meeting with the Tax Matters Partner. We understand that Letter 2205 is used to set up an appointment, and that Publication 1, Notice 609, and Form 4562 are included with the letter. This is sufficient to apprise the TMP of his rights in any meeting with the IRS. Thus, it is not necessary to include this information with the NBAP.

We do not believe that the NBAP, revised on November 1989, requires modification. Accordingly, we recommend a return to that format. In the alternative, the existing form, dated March 2001, should be revised to incorporate the above outlined comments. The revised language should follow appropriate clearance procedures including review by the office of the Associate Chief Counsel (Procedure & Administration).

Please call if you have any further questions.