

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Third Party Communication: None
Date of Communication: Not Applicable
Person To Contact:

, ID No.
Telephone Number:

Refer Reply To:
CC:PA:01
PLR-108070-11
Date:
September 23, 2011

Legend

Partnership =
Parent =

Dear :

This is in response to your request dated February 23, 2011, and supplemented on September 7, 2011 and September 22, 2011, for a private letter ruling under section 6031 of the Internal Revenue Code (Code). Specifically, you request a ruling that Partnership's delivery in electronic format of substitute Schedule K-1s that you represent satisfy the requirements of Section 7.1 of Rev. Proc. 2010-21, under procedures that you represent satisfy the consent and notification requirements for electronic delivery of statements set forth in Part B, Section 3 of Rev. Proc. 2010-24, will satisfy the requirements of section 6031(b) of the Code and Treas. Reg. § 1.6031(b)-1T(a)(1).

FACTS

Partnership is a calendar-year taxpayer and files Form 1065 with the Internal Revenue Service (Service) electronically. Partnership currently satisfies its obligations under Section 6031(b) of the Code to furnish information to its members by sending paper Schedule K-1 (Form 1065), Partner's Shares of Income, Deductions, Credits, etc., via United States mail. Partnership also provides copies of Schedule K-1s to its partners electronically via a secure website, for information purposes only.

Partnership currently provides certain electronic communications to its partners through a website maintained by its Parent. Consents to electronic delivery of communications between Partnership and its partners are set forth in a Subscription Agreement executed by the partners upon their initial investment in the Partnership. Partners are notified via e-mail that electronic communications are available to be accessed through

the website. Each partner then logs into the website with a user ID and password, and downloads the electronic communication. This is also how a partner accesses the copy of the partner's individual Schedule K-1 currently made available for information purposes only. Partners may revoke or suspend consent to electronic delivery or request paper copies of electronic communications at any time.

In the future, Partnership would like to furnish substitute Schedule K-1s exclusively in electronic format to new partners who consent to electronic delivery under the procedures described below. Partnership represents that the substitute Schedule K-1s will meet the requirement for substitute forms set forth in section 7.1 of Rev. Proc. 2010-21, 2010-13 I.R.B. 473. In addition, Partnership represents that it will follow procedures regarding the delivery of substitute Schedule K-1s that satisfy the consent and notification requirements for electronic delivery of other forms (e.g., Forms W-2) set forth in Part B, Section 3 of Rev. Proc. 2010-42, 2010-47 I.R.B. 715. Specifically, Partnership states that it will adhere to the following procedures:

1. The Partnership will obtain consent to electronic delivery from new partners pursuant to the Subscription Agreement. Each new partner will be sent an email requesting that the partner log on to Parent's website and consent to receive all account communications, including the Schedule K-1, electronically.
2. If Parent changes the hardware or software used to furnish the electronic form, Parent, on behalf of the Partnership, will notify the partners of these changes and obtain a new consent prior to furnishing the Schedule K-1.
3. Prior to furnishing the Schedule K-1s electronically to new partners, Parent, on behalf of the Partnerships, will provide each recipient partner with a statement (the 30-day e-mail) that prominently displays the following information:
 - a. that, if the recipient does not consent to receive the Schedule K-1 electronically, a paper copy will be provided;
 - b. the scope and duration of the consent;
 - c. how to obtain a paper copy of the Schedule K-1 after giving consent;
 - d. how to withdraw the consent;
 - e. that the consent may be withdrawn at any time by furnishing the withdrawal in writing (electronically or on paper) to the person whose name appears on the statement or by contacting the designated Parent representative by telephone to verbally request withdrawal of consent, at which time Parent's representative will withdraw the partner's consent by adjusting the partner's global preferences on Parent's website;

- f. that the partner can confirm withdrawal of consent by checking his or her global preferences set forth on the Parent's website, and further that if the withdrawal was requested orally, Parent will contemporaneously send an e-mail to the recipient partner confirming their withdrawal request and providing instructions to contact Parent if it was not their intention to withdraw their consent.
- g. notice of termination (i.e., under what conditions the statements will no longer be furnished to the recipient);
- h. procedures to update the recipient's information;
- i. a description of the hardware and software required to access, print and retain the statement, and a date the statement will no longer be available on the partnership website.

LAW

Furnishing of Schedule K-1s

Section 6031(a) of the Code provides, in part, that every partnership shall make a return for each taxable year, stating specifically the terms of its gross income and deductions, and such other information as the Secretary may by forms and regulations prescribe, and shall include in the return the names and addresses of the individuals who would be entitled to share in the taxable income if distributed and the amount of the distributive share of each individual.

Section 6031(b) of the Code provides, in part, that each partnership required to file a return for any partnership taxable year shall (on or before the day on which the return for such taxable year was required to be filed) furnish to each person who is a partner or who holds an interest in such partnership as a nominee for another person at any time during such taxable year a copy of such information required to be shown on such return as may be required by regulations.

Section 1.6031(b)-1T of the Income Tax Regulations (regulations) provides, in part, that each partnership required to file a return for any partnership taxable year shall (on or before the day on which the return for such taxable year is required to be filed) furnish to each person who is a partner or who holds an interest in such partnership as a nominee for another person at any time during such taxable year a written statement containing the information prescribed by section 1.6031(b)-1T(a)(3) and any additional information required by form or accompanying instructions. This information includes the partner's distributive share of partnership income, gain, loss, deduction, or credit required to be shown on the partnership return.

The 2010 Instructions for Form 1065, U.S. Return of Partnership Income, provide, in part, that the partnership furnish a copy of Schedule K-1 to each partner.

Substitute Schedule K-1s

Rev. Proc. 2010-21 provides guidance on the requirements for forms accepted as substitutes for official Internal Revenue Service forms. Section 7.1 of Rev. Proc. 2010-21 sets forth specific guidelines for substitute Schedule K-1s. Section 7.1.1 of Rev. Proc. 2010-21 provides, in part, that substitute schedules K-1 should be as close as possible to exact replicas of copies of the official IRS schedules. The 2010 Instructions for Form 1065, U.S. Return of Partnership Income, provide, in part, that a partnership does not need IRS approval to use a substitute Schedule K-1 if it is an exact copy of the IRS schedule.

Electronic Furnishing of Statements

Section 6031 of the Code and the Treasury Regulations are silent on whether electronic delivery of Schedule K-1s is permitted. Section 31.6051-1(j) of the Employment Tax Regulations and Part B, Section 3 of Rev. Proc. 2010-42, 2010-47 I.R.B. 715 set forth procedural consent and notification requirements for the electronic delivery of Form W-2, Wage and Tax Statement. Section 4.5 of Rev. Proc. 2009-49, 2009-51 I.R.B. 879 sets forth procedural and notification requirements for the electronic delivery of Forms 1098, 1099, and 5498, among others. Finally, section 1.6050S-2 of the Income Tax Regulations sets forth the procedural consent and notification requirements for the electronic delivery of statements required by I.R.C. § 6050S regarding payments and reimbursements or refunds of qualified tuition and related expenses.

ANALYSIS

Section 6031(b) and section 1.6031-1T(a) provide that each partnership must furnish to each person who is a partner or who holds an interest in such partnership as a nominee for another person at any time during the taxable year a copy of information required to be shown on the partnership return, but does not prescribe the method of furnishing such information. The Service has issued regulations and revenue procedures authorizing the electronic furnishing of Forms W-2, providing for procedural consent and notification that satisfy the needs of tax administration in ensuring that recipients consent to receive these written statements electronically and that recipients actually receive these statements electronically. The Service has also issued similar regulations authorizing the electronic furnishing of statements required by I.R.C. § 6050S, as well as revenue procedures authorizing the electronic furnishing of Forms 1098, 1099, 5498, and W-2G.

Partnership represents that it will follow the procedures in furnishing electronic Schedule K-1s to its partners that satisfy the procedural consent and notification requirements applicable to Forms W-2, as set forth in Rev. Proc. 2010-42. Partnership further represents that the substitute K-1s furnished to its partners will meet the requirements for substitute forms set forth in Section 7.1 of Rev. Proc. 2010-21. If the Partnership electronically furnishes substitute Schedule K-1s that satisfy the requirements of Section 7.1 of Rev. Proc. 2010-21, under procedures that satisfy the consent and notification requirements for electronic delivery of statements set forth in Part B, Section 3 of Rev. Proc. 2010-42, the Partnership will satisfy the requirements of section 6031(b) of the Code and Treas. Reg. 1.6031(b)-1T(a)(1).

The procedures outlined by Partnership satisfy the consent and notification requirements for electronic delivery of statements set forth in Part B, Section 3 of Rev. Proc. 2010-42, 2010-47 I.R.B. 715. The regulations and revenue procedures authorizing electronic delivery of statements all require that the recipient of a statement must affirmatively consent to receive the statement in an electronic format. The consent may be made electronically in any manner that reasonably demonstrates that the recipient can access the statement in the electronic format in which it will be furnished to the recipient. See Treas. Reg. § 31.6051-1(j)(2); Treas. Reg. § 1.6050S-2(a)(2); Rev. Proc. 2010-42, Part B, Section 3.02; and Rev. Proc. 2009-49, Section 4.5.1. Partnership has represented that new partners will be required to affirmatively consent to electronic delivery of the Form K-1 by logging onto the Parent's web site and agreeing to receive a number of communications electronically, including the Form K-1. This satisfies the affirmative consent requirement.

In the area of withdrawal of consent, the regulations and the revenue procedures all provide that consent may be withdrawn at any time by furnishing the withdrawal in writing (electronically or on paper) to the person whose name appears on the statement. Confirmation of the withdrawal also will be in writing (electronically or on paper). See Treas. Reg. § 31.6501-1(j)(2)(v); Treas. Reg. § 1.6050S-2(a)(3)(v); Rev. Proc. 2010-42, Part B, Section 3.02; Rev. Proc. 2009-49, Section 4.5.1. Partnership represents that partners may withdraw consent by furnishing the withdrawal in writing (electronically or on paper) to the person whose name appears on the statement. In addition, a partner may withdraw by contacting a designated Parent representative by telephone to verbally request withdrawal of consent, at which time Parent's representative will withdraw the partner's consent by adjusting the partner's global preferences on Parent's website. If the withdrawal is requested orally, Parent will contemporaneously send an e-mail to the recipient partner confirming the withdrawal request and providing instructions to contact Parent if he or she did not intend to withdraw consent. This procedure is sufficient to meet the requirements of written withdrawal and confirmation. Although some partners will not request withdrawal in writing, the contemporaneous written confirmation of electronic withdrawal is sufficient to protect those partners from an unwanted or inadvertent withdrawal.

CONCLUSION

Based on the information provided and the representations made, we conclude Partnership's proposed delivery in electronic format of substitute Schedule K-1s satisfies the consent and notification requirements set forth in the regulations and revenue procedures authorizing electronic delivery of certain written statements. Thus, these procedures will satisfy the requirements of section 6031(b) of the Code and Treas. Reg. 1.6031(b)-1T(a)(1). The Partnership will not need Service approval to use a substitute Schedule K-1 if it uses an exact copy of the Services Schedule K-1.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

James Coffey Gibbons
Branch Chief, Branch 1
(Procedure & Administration)

cc: