

Selection of Tax Matters Partner for Limited Liability Companies

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations giving guidance necessary for the designation or selection of a tax matters partner for partnerships including limited liability companies classified as partnerships.

DATES: These regulations are effective December 23, 1996. For dates of applicability of these regulations, see § 301.6231(a)(7)–2(c).

FOR FURTHER INFORMATION CONTACT: D. Lindsay Russell, (202) 622–3050 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–0790. Responses to these collections of information enable the designation, and the termination of the designation, of a tax matters partner for a partnership.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The estimated annual burden per respondent varies from .50 hour to 1 hour, depending on individual circumstances, with an estimated average of .75 hour.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224, and to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Prior to the enactment of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), adjustments attributable to the tax items of a partnership were made at the partner level. Section 402 of TEFRA added sections 6221 through 6231 to the Internal Revenue Code to allow for consolidated administrative and judicial proceedings to determine the tax treatment of partnership items at the partnership level. Under this consolidated proceeding, the tax matters partner of a partnership represents the partnership before the IRS in all tax matters for a specific taxable year.

Section 6231(a)(7) provides that the tax matters partner of a partnership is the general partner designated as the tax matters partner as provided in regulations or, if no general partner is designated, the general partner having the largest profits interest in the partnership at the close of the taxable year involved (largest-profits-interest rule). Section 6231(a)(7) also provides that, if no general partner is designated and the Commissioner determines that it is impracticable to apply the largest-profits-interest rule, the partner selected by the Commissioner is treated as the tax matters partner.

On April 18, 1986, a notice of proposed rulemaking (LR–205–82) concerning sections 6221 through 6231 and section 6233 was published in the **Federal Register** (51 FR 13231). The notice of proposed rulemaking included guidance concerning designating tax matters partners. Several comments on the proposed regulations were received, but no public hearing was requested and none was held. Temporary regulations identical to the proposed regulations in LR–205–82 were published in the **Federal Register** (52 FR 6779) on March 5, 1987.

On February 29, 1988, the IRS published Rev. Proc. 88–16 (1988–1 C.B. 691). This revenue procedure describes circumstances under which the IRS will determine that it is impracticable to apply the largest-profits-interest rule and describes the criteria the IRS will consider in selecting a tax matters partner for the partnership.

Since the enactment of TEFRA, all states and several foreign jurisdictions have enacted laws providing for the formation of limited liability companies (LLCs). LLCs in most jurisdictions may be classified for Federal tax purposes either as partnerships or associations

Section 6231.—Definitions and Special Rules

26 CFR 301.6231(a)(7)–1: Designation or selection of tax matters partner.

T.D. 8698

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Parts 301 and 602

that are taxable as corporations. For LLCs that are classified as partnerships for Federal tax purposes, it is necessary to determine the tax matters partner for the LLC.

On October 30, 1995, a notice of proposed rulemaking (PS-34-92) concerning section 6231(a)(7) was published in the **Federal Register** (60 FR 55228). The notice of proposed rulemaking amended proposed regulations to consolidate certain guidance necessary to determine the tax matters partner for partnerships. The notice of proposed rulemaking also proposed guidance concerning the designation or selection of a tax matters partner for limited liability companies classified as partnerships. No public hearing was requested or held, and no written comments were received.

Explanation of Provisions

The regulations concerning the designation or selection of tax matters partners proposed by LR-205-82 and PS-34-92 are adopted, with minor stylistic changes, by this Treasury decision. The corresponding temporary regulations are removed.

Effect on Other Documents

Rev. Proc. 88-16 is obsolete as of December 23, 1996.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the notice of proposed rulemaking preceding the regulations was issued prior to March 29, 1996, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply.

Drafting Information

The principal author of these regulations is D. Lindsay Russell, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

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26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 301 and 602 are amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by removing the entry for section 301.6231(a)(7)-1T and adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 301.6231(a)(7)-1 also issued under 26 U.S.C. 6230 (i) and (k).

Section 301.6231(a)(7)-2 also issued under 26 U.S.C. 6230 (i) and (k). * * *

Par. 2. Section 301.6231(a)(7)-1T is removed.

Par. 3. Section 301.6231(a)(7)-1 is added to read as follows:

§ 301.6231(a)(7)-1 Designation or selection of tax matters partner.

(a) *In general.* A partnership may designate a partner as its tax matters partner for a specific taxable year only as provided in this section. Similarly, the designation of a partner as the tax matters partner for a specific taxable year may be terminated only as provided in this section. If a partnership does not designate a general partner as the tax matters partner for a specific taxable year, or if the designation is terminated without the partnership designating another general partner as the tax matters partner, the tax matters partner is the partner determined under this section.

(b) *Person who may be designated tax matters partner—*(1) *General requirement.* A person may be designated as the tax matters partner of a partnership for a taxable year only if that person—

(i) Was a general partner in the partnership at some time during the taxable year for which the designation is made; or

(ii) Is a general partner in the partnership as of the time the designation is made.

(2) *Limitation on designation of tax matters partner who is not a United States person.* If any United States person would be eligible under paragraph (a) of this section to be designated as the tax matters partner of a partnership for a taxable year, no person who is not a United States person may be designated as the tax matters partner of the partnership for that year without the

consent of the Commissioner. For the definition of *United States person*, see section 7701(a)(30).

(c) *Designation of tax matters partner at time partnership return is filed.* The partnership may designate a tax matters partner for a partnership taxable year on the partnership return for that taxable year in accordance with the instructions for that form.

(d) *Certification by current tax matters partner of selection of successor.* If a partner properly designated as the tax matters partner of a partnership for a partnership taxable year under this section certifies that another partner has been selected as the tax matters partner of the partnership for that taxable year, that other partner is thereby designated as the tax matters partner for that year. The current tax matters partner shall make the certification by filing with the service center with which the partnership return is filed a statement that—

(1) Identifies the partnership, the partner filing the statement, and the successor tax matters partner by name, address, and taxpayer identification number;

(2) Specifies the partnership taxable year to which the designation relates;

(3) Declares that the partner filing the statement has been properly designated as the tax matters partner of the partnership for the partnership taxable year and that that designation is in effect immediately before the filing of the statement;

(4) Certifies that the other named partner has been selected as the tax matters partner of the partnership for that taxable year in accordance with the partnership's procedure for making that selection; and

(5) Is signed by the partner filing the statement.

(e) *Designation by general partners with majority interest.* The partnership may designate a tax matters partner for a partnership taxable year at any time after the filing of a partnership return for that taxable year by filing a statement with the service center with which the partnership return was filed. The statement shall—

(1) Identify the partnership and the designated partner by name, address, and taxpayer identification number;

(2) Specify the partnership taxable year to which the designation relates;

(3) Declare that it is a designation of a tax matters partner for the taxable year specified; and

(4) Be signed by persons who were general partners at the close of the year

and were shown on the return for that year to hold more than 50 percent of the aggregate interest in partnership profits held by all general partners as of the close of that taxable year. For purposes of this paragraph (e)(4), all limited partnership interests held by general partners shall be included in determining the aggregate interest in partnership profits held by such general partners.

(f) *Designation by partners with majority interest under certain circumstances*—(1) *In general.* A tax matters partner may be designated for a partnership taxable year under this paragraph (f) only if, at the time the designation is made, each partner who was a general partner at the close of such partnership taxable year is described in one or more of paragraphs (f)(1)(i) through (iv) of this section as follows:

(i) The general partner is dead, or, if the general partner is an entity, has been liquidated or dissolved;

(ii) The general partner has been adjudicated by a court of competent jurisdiction to be no longer capable of managing his or her person or estate;

(iii) The general partner's partnership items have become nonpartnership items under section 6231(b); or

(iv) The general partner is no longer a partner in the partnership.

(2) *Method of making designation.* A tax matters partner for a partnership taxable year may be designated under this paragraph (f) at any time after the filing of the partnership return for such taxable year by filing a written statement with the service center with which the partnership return was filed. The statement shall—

(i) Identify the partnership and the designated tax matters partner by name, address, and taxpayer identification number;

(ii) Specify the partnership taxable year to which the designation relates;

(iii) Declare that it is a designation of a tax matters partner for the partnership taxable year specified; and

(iv) Be signed by persons who were partners at the close of such taxable year and were shown on the return for that year to hold more than 50 percent of the aggregate interest in partnership profits held by all partners as of the close of such taxable year.

(g) *Designation of alternate tax matters partner.* If an individual is designated as the tax matters partner of a partnership under paragraph (c), (d), (e), or (f) of this section, the document by which that individual is designated may

also designate an alternate tax matters partner who will become tax matters partner upon the occurrence of one or more of the events described in paragraph (l)(1)(i) or (ii) of this section. The person designated as the alternate tax matters partner becomes the tax matters partner as of the time the designation of the tax matters partner is terminated under paragraph (l)(1)(i) or (ii) of this section. The designation of a person as the alternate tax matters partner shall have no effect in any other case.

(h) *Prior designations superseded.* A designation of a tax matters partner for a partnership taxable year under paragraphs (d), (e), or (f) of this section shall supersede all prior designations of a tax matters partner for that year, including a prior designation of an alternate tax matters partner under paragraph (g) of this section.

(i) *Resignation of designated tax matters partner.* A person designated as the tax matters partner of a partnership under this section may resign at any time by a written statement to that effect. The statement shall specify the partnership taxable year to which the resignation relates and shall identify the partnership and the tax matters partner by name, address, and taxpayer identification number. The statement shall also be signed by the resigning tax matters partner and shall be filed with the service center with which the partnership return was filed.

(j) *Revocation of designation.* The partnership may revoke the designation of the tax matters partner for a partnership taxable year at any time after the filing of a partnership return for that taxable year by filing a statement with the service center with which the partnership return was filed. The statement shall—

(1) Identify by name, address, and taxpayer identification number the partnership and the general partner whose designation as tax matters partner is being revoked;

(2) Specify the partnership taxable year to which the revocation relates;

(3) Declare that it is a revocation of a designation of the tax matters partner for the taxable year specified; and

(4) Be signed by the persons described in paragraph (e)(4) of this section, or, if at the time that the revocation is made, each partner who was a general partner at the close of the partnership taxable year to which the revocation relates is described in one or more of paragraphs (f)(1)(i) through (iv) of this

section, by the persons described in paragraph (f)(2)(iv) of this section.

(k) *When designation, etc., becomes effective*—(1) *In general.* Except as otherwise provided in paragraph (k)(2) of this section, a designation, resignation, or revocation provided for in this section becomes effective on the day that the statement required by the applicable paragraph of this section is filed.

(2) *Notice of proceeding mailed.* If a notice of beginning of an administrative proceeding with respect to a partnership taxable year is mailed before the date on which a statement of designation, resignation, or revocation provided for in this section with respect to that taxable year is filed, the Service is not required to give effect to such designation, resignation, or revocation until 30 days after the statement is filed.

(l) *Termination of designation*—(1) *In general.* A designation of a tax matters partner for a taxable year under this section shall remain in effect until—

(i) The death of the designated tax matters partner;

(ii) An adjudication by a court of competent jurisdiction that the individual designated as the tax matters partner is no longer capable of managing the individual's person or estate;

(iii) The liquidation or dissolution of the tax matters partner, if the tax matters partner is an entity;

(iv) The partnership items of the tax matters partner become nonpartnership items under section 6231(c) (relating to special enforcement areas); or

(v) The day on which—

(A) The resignation of the tax matters partner under paragraph (i) of this section;

(B) A subsequent designation under paragraph (d), (e), or (f) of this section; or

(C) A revocation of the designation under paragraph (j) of this section becomes effective.

(2) *Actions by the tax matters partner before termination of designation.* The termination of the designation of a partner as the tax matters partner under paragraph (l)(1) of this section does not affect the validity of any action taken by that partner as tax matters partner before the designation is terminated. For example, if that tax matters partner had previously consented to an extension of the period for assessments under section 6229(b)(1)(B), that extension remains valid even after termination of the designation.

(m) *Tax matters partner where no partnership designation made*—(1) *In general.* The tax matters partner for a partnership taxable year shall be determined under this paragraph (m) if—

(i) The partnership has not designated a tax matters partner under this section for that taxable year; or

(ii) The partnership has designated a tax matters partner under this section for that taxable year, that designation has been terminated under paragraph (l)(1) of this section, and the partnership has not made a subsequent designation under this section for that taxable year.

(2) *General partner having the largest profits interest is the tax matters partner.* The tax matters partner for any partnership taxable year to which this paragraph (m) applies is the general partner having the largest profits interest in the partnership at the close of that taxable year (or where there is more than one such partner, the one of such partners whose name would appear first in an alphabetical listing). For purposes of this paragraph (m)(2), all limited partnership interests held by a general partner shall be included in determining that general partner's profits interest in the partnership. For purposes of this paragraph (m)(2), the general partner with the largest profits interest is determined based on the year-end profits interests reported on the Schedules K-1 filed with the partnership income tax return for the taxable year for which the determination is being made.

(3) *Termination of designation.* A designation of a tax matters partner for a partnership taxable year under this paragraph (m) shall remain in effect until the earlier of the occurrence of one or more of the events described in paragraphs (l)(1)(i) through (iv) of this section or the day on which a designation under paragraph (d), (e), or (f) of this section becomes effective. If a designation of a tax matters partner for a partnership taxable year is terminated under this paragraph (m)(3) and the partnership has not subsequently designated a tax matters partner for that taxable year under paragraph (d), (e), or (f) of this section, the tax matters partner for that taxable year shall be determined under paragraph (m)(2) of this section, and, for purposes of applying paragraph (m)(2) of this section, the general partner whose designation was so terminated shall be treated as having no profits interest in the partnership for that taxable year.

(n) *Selection of tax matters partner by Commissioner when impracticable to apply the largest-profits-interest rule.* If the partnership has not designated a tax matters partner under this section for the taxable year and it is impracticable (as determined under paragraph (o) of this section) to apply the largest-profits-interest rule of paragraph (m)(2) of this section, the Commissioner will select a tax matters partner as described in paragraph (p) of this section.

(o) *Impracticability of largest-profits-interest rule.* It is impracticable to apply the largest-profits-interest rule of paragraph (m)(2) of this section if, on the date the rule is applied, any one of the following three conditions is met:

(1) *General partner with the largest profits interest is not apparent.* The general partner with the largest profits interest is not apparent from the Schedules K-1 and is not otherwise readily determinable.

(2) *Each general partner is deemed to have no profits interest in the partnership.* Each general partner is deemed to have no profits interest in the partnership under paragraph (m)(3) of this section (concerning termination of a designation under the largest-profits-interest rule) because of the occurrence of one or more of the events described in paragraphs (l)(1)(i) through (iv) of this section (involving death, adjudication of incompetency, liquidation, and conversion of partnership items to nonpartnership items).

(3) *General partner with the largest profits interest is disqualified.* The general partner with the largest profits interest determined under paragraph (m)(2) of this section—

(i) Has been notified of suspension from practice before the Internal Revenue Service;

(ii) Is incarcerated;

(iii) Is residing outside the United States, its possessions, or territories; or

(iv) Cannot be located or cannot perform the functions of a tax matters partner for any reason, except that lack of cooperation with the Internal Revenue Service by the general partner with the largest profits interest is not a basis for finding that the partner cannot perform the functions of a tax matters partner.

(p) *Commissioner's selection of the tax matters partner*—(1) *When the general partner with the largest profits interest is not apparent.* If it is impracticable under paragraph (o)(1) of this section to apply the largest-profits-

interest rule of paragraph (m)(2) of this section, the Commissioner will select (in accordance with the notification procedures set forth in paragraph (r) of this section) as the tax matters partner any person who was a general partner at any time during the taxable year under examination.

(2) *When each general partner is deemed to have no profits interest in the partnership.* If it is impracticable under paragraph (o)(2) of this section to apply the largest-profits-interest rule of paragraph (m)(2) of this section, the Commissioner will select a partner (including a general or limited partner) as the tax matters partner in accordance with the criteria set forth in paragraph (q) of this section. The Commissioner will notify both the partner selected and the partnership of the selection, effective as of the date specified in the notice.

(3) *When the general partner with the largest profits interest is disqualified*—(i) *In general.* Except as otherwise provided in paragraph (p)(3)(ii) of this section, if it is impracticable under paragraph (o)(3) of this section to apply the largest-profits-interest rule of paragraph (m)(2) of this section, the Commissioner will treat each general partner who fits the criteria contained in paragraph (o)(3) of this section as having no profits interest in the partnership for the taxable year and will select (in accordance with the notification procedures set forth in paragraph (r) of this section) a tax matters partner from the remaining persons who were general partners at any time during the taxable year.

(ii) *Partner selected if no general partner may be selected.* If all general partners during the taxable year either are treated as having no profits interest in the partnership for the taxable year under paragraph (m)(3) of this section (concerning termination of a designation under the largest-profits-interest rule) or are described in paragraph (o)(3) of this section (general partner with the largest profits interest is disqualified), the Commissioner will select a partner (including a general or limited partner) as the tax matters partner in accordance with the criteria set forth in paragraph (q) of this section. The Commissioner will notify both the partner selected and the partnership of the selection, effective as of the date specified in the notice.

(q) *Criteria for selecting a partner as tax matters partner*—(1) *In general.* The Commissioner will select a partner as the tax matters partner under paragraph (p)(2) or (3)(ii) of this section only if

the partner was a partner in the partnership at the close of the taxable year under examination.

(2) *Criteria to be considered.* The Commissioner may consider the following criteria in selecting a partner as the tax matters partner:

(i) The general knowledge of the partner in tax matters and the administrative operation of the partnership.

(ii) The partner's access to the books and records of the partnership.

(iii) The profits interest held by the partner.

(iv) The views of the partners having a majority interest in the partnership regarding the selection.

(v) Whether the partner is a partner of the partnership at the time the tax-matters-partner selection is made.

(vi) Whether the partner is a United States person (within the meaning of section 7701(a)(30)).

(3) *Limited restriction on subsequent designation of a tax matters partner by the partnership.* For purposes of paragraphs (p)(2) and (3)(ii) of this section, the partnership cannot designate a partner who is not a general partner to serve as tax matters partner in lieu of a partner selected by the Commissioner.

(r) *Notification of partnership—(1) In general.* If the Commissioner selects a tax matters partner under the provisions of paragraph (p)(1) or (3)(i) of this section, the Commissioner will notify both the partner selected and the partnership of the selection, effective as of the date specified in the notice.

(2) *Limited opportunity for partnership to designate the tax matters partner.* (i) Before the Commissioner selects a tax matters partner under paragraphs (p)(1) and (3)(i) of this section, the Commissioner will notify the partnership by mail that, after 30 days from the date of the notice, the Commissioner will make a determination that it is impracticable to apply the largest-profits-interest rule of paragraph (m)(2) of this section and will select the tax matters partner unless a prior designation is made by the partnership. This

delay in making the determination will permit the partnership to designate a tax matters partner under paragraph (e) of this section (designation by general partners with a majority interest) or paragraph (f) of this section (designation by partners with a majority interest under certain circumstances), thereby avoiding a selection made by the Commissioner.

(ii) During the 30-day period and prior to a tax-matters-partner designation by the partnership, the Commissioner will communicate with the partnership by sending all correspondence or notices to "The Tax Matters Partner" in care of the partnership at the partnership's address.

(iii) Any subsequent designation of a tax matters partner by the partnership after the 30-day period will become effective as provided under paragraph (k)(2) of this section (concerning designations made after a notice of beginning of administrative proceeding is mailed).

(s) *Effective date.* This section applies to all designations, selections, and terminations of a tax matters partner occurring on or after December 23, 1996.

Par. 4. Section 301.6231(a)(7)–2 is added to read as follows:

§ 301.6231(a)(7)–2 *Designation or selection of tax matters partner for a limited liability company (LLC).*

(a) *In general.* Solely for purposes of applying section 6231(a)(7) and § 301.6231(a)(7)–1 to an LLC, only a member-manager of an LLC is treated as a general partner, and a member of an LLC who is not a member-manager is treated as a partner other than a general partner.

(b) *Definitions—(1) LLC.* Solely for purposes of this section, LLC means an organization—

(i) Formed under a law that allows the limitation of the liability of all members for the organization's debts and other obligations within the meaning of § 301.7701–3(b)(2)(ii); and

(ii) Classified as a partnership for Federal tax purposes.

(2) *Member.* Solely for purposes of this section, *member* means any person who owns an interest in an LLC.

(3) *Member-manager.* Solely for purposes of this section, *member-manager* means a member of an LLC who, alone or together with others, is vested with the continuing exclusive authority to make the management decisions necessary to conduct the business for which the organization was formed. Generally, an LLC statute may permit the LLC to choose management by one or more managers (whether or not members) or by all of the members. If there are no elected or designated member-managers (as so defined in this paragraph (b)(3)) of the LLC, each member will be treated as a member-manager for purposes of this section.

(c) *Effective date.* This section applies to all designations, selections, and terminations of a tax matters partner of an LLC occurring on or after December 23, 1996. Any other reasonable designation or selection of a tax matters partner of an LLC is binding for periods prior to December 23, 1996.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 5. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 6. In § 602.101, paragraph (c) is amended by adding the entry "301.6231(a)(7)–1....1545–0790" in numerical order to the table.

Michael P. Dolan,
Acting Commissioner of Internal Revenue.

Approved November 8, 1996.

Donald C. Lubick,
Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on December 20, 1996, 8:45 a.m., and published in the issue of the Federal Register for December 23, 1996, 61 F.R. 67454)