

# *Ethical Issues Regarding the Partnership Representative*



American Bar Association  
2018 Fall Tax Meeting  
October 5, 2018

Caplin & Drysdale  
Chartered



# ABA Section of Taxation

2018 Fall Tax Meeting

Standards of Tax  
Practice Committee

October 5, 2018

- **Speakers:**
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  - Barksdale Penick, EY, Washington, DC
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# Overview



- Background on the Partnership Representative
  - Selection of the Partnership Representative
  - Designating and Changing a Partnership Representative
- Differences between the Tax Matters Partner and the Partnership Representative
- Duties and Responsibilities of the Partnership Representative
- Hypotheticals
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# Background



- On November 2, 2015, Congress enacted the Bipartisan Budget Act of 2015 (“BBA”)
- The BBA repealed the partnership examination procedures under the Tax Equity and Fiscal Responsibility Act of 1982 (“TEFRA”) and created a new partnership audit regime
- One of the biggest changes was the introduction of the “Partnership Representative” as a replacement for the “Tax Matters Partner” previously used under TEFRA
- The Partnership Representative has far more power to act on behalf of the partnership than the Tax Matters Partner
- On August 9, 2018, the IRS promulgated final regulations (TD-9839) to clarify open-ended questions on Partnership Representatives

# Selection of the Partnership Representative



- The Partnership Representative for each tax year will be designated on the partnership's annual tax return
- The final regulations expanded the eligibility of who can serve as a partnership's Partnership Representative
  - Any person (as defined under IRC §7701(a)(1)) may serve as the Partnership Representative
  - This includes entities, and even the partnership itself
  - If an entity is selected as the Partnership Representative, the partnership must appoint a "Designated Individual" of the entity to act on behalf of the partnership

# Selection of the Partnership Representative



- The Partnership Representative and the Designated Individual must have “Substantial Presence” in the U.S.
- A Partnership Representative and/or Designated Individual meets the substantial presence requirement if they have:
  - A U.S. taxpayer identification number;
  - A U.S. address;
  - A U.S. telephone number; and
  - Makes themselves reasonably available to the IRS

# Designating and Changing a Partnership Representative



- Generally, the designation of a Partnership Representative can only be changed once the partnership is notified it has been selected for examination or receives a notice of administrative proceeding
  - A partnership may change its selection prior to this by filing an administrative adjustment request, but only if the request is also used for a substantive change
- The IRS may also determine that there is no Partnership Representative in place. If there is no Partnership Representative in place, the IRS will make its own selection of the Partnership Representative

# Differences between the Tax Matters Partner and the Partnership Representative



- Selection of the representative
  - Tax Matters Partner – had to be a partner/member of the entity
  - Partnership Representative – can be any entity defined in section 7701(a)(1), including an outside representative
- Power to bind the partners
  - Tax Matters Partners – could settle partnership-level items with the IRS
  - Partnership Representative – binds the partnership and all partners to any settlement with the IRS
- Notification and participation rights of other partners
  - Tax Matters Partner – other partners had notification and participation rights in proceedings with the IRS
  - Partnership Representative – While the partnership itself is now notified of an examination or administrative proceeding, only the Partnership Representative has participation rights



# Duties and Responsibilities of the Partnership Representative



- The Partnership Representative has the authority to bind the partnership during audit proceedings with the IRS
- The Partnership Representative must make themselves available to schedule telephone calls with the IRS, meet with the IRS at a mutually convenient time and place, and make the books and records of the partnership available to the IRS
- Any additional duties placed on the Partnership Representative would come from the partnership agreement or a contract between the Partnership Representative and the partnership
  - While this would place contractual obligations on the Partnership Representative, it will not affect the relationship between Partnership Representative and the IRS

# Hypothetical #1a



ABC LP is a law firm. ABC's partnership agreement contains a standard provision about selecting a partner of the firm as its Tax Matters Partner. John Smith has been the Tax Matters Partner for the past several years. After the enactment of the BBA, ABC does not amend its partnership agreement and continues to include language about a Tax Matters Partner. On its 2018 return, ABC lists John as its new Partnership Representative.

*What issues could arise for ABC if it does not amend its partnership agreement?*

*What if ABC simply changes the words "Tax Matters Partner" to "Partnership Representative"?*

# Hypothetical #1b



ABC receives notification that it has been selected for examination. The partners of ABC still have not amended the partnership agreement. The firm administrator forwards the notice of ABC's selection for examination to John. John does not notify the other partners of the examination. John goes before the IRS and settles all matters at issue in the examination. The other partners of ABC are upset that they did not receive notification of John's meeting with the IRS and could not participate.

*What changes would you advise ABC to make to prevent these issues from arising again?*

*What ethical obligations does John have as the Partnership Representative in representing ABC before the IRS? Does he have separate ethical obligations as a lawyer? As a partner in the partnership?*

# Hypothetical #1c



John has a falling out with his other law partners and is looking to leave ABC. Before he can leave ABC, ABC is notified of another examination. ABC does not take any steps to revoke John's Partnership Representative designation.

*Can John ethically continue to act as ABC's Partnership Representative?*

*What steps should the partnership take to revoke John's authority?*

# Hypothetical #1d



John has now left ABC. The remaining partners of ABC are trying to determine who should be their next Partnership Representative?

*What considerations should they make in determining their next Partnership Representative?*

*Should they select someone internal to the partnership? External? The partnership itself?*

*Based on their experiences with John, should they make any additional changes to their partnership agreement?*

# Hypothetical #2a



123 Partnership has only U.S.-citizen partners. Jane Smith, one of the partners, is designated as the Partnership Representative. The partners begin negotiations to sell their partnership interests to five foreign-based partners. Before the sale is finalized, 123 Partnership receives a notice of its selection for examination.

*What ethical considerations should Jane contemplate while acting as 123's Partnership Representative?*

*Would it be ethical for Jane to bind the partnership to pay a tax liability during this time?*

# Hypothetical #2b



The sale goes through to the five foreign-based individuals. None of the new partners has substantial presence in the U.S. The partners do not want to appoint a non-partner as the Partnership Representative, so they knowingly select a partner without substantial presence.

*Can (and should) the ineligible Partnership Representative act on behalf of the partnership?*

*What if the ineligible Partnership Representative formerly worked in the U.S. and was a Circular 230 representative?*

*As an attorney, what advice would you give 123 Partnership about selecting a Partnership Representative?*

# IRC § 6223 - *Partners bound by actions of partnership*



(a) *Designation of partnership representative.* Each partnership shall designate (in the manner prescribed by the Secretary) a partner (or other person) with a substantial presence in the United States as the partnership representative who shall have the sole authority to act on behalf of the partnership under this subchapter. In any case in which such a designation is not in effect, the Secretary may select any person as the partnership representative.

(b) *Binding effect.* A partnership and all partners of such partnership shall be bound—

- (1) by actions taken under this subchapter by the partnership, and
- (2) by any final decision in a proceeding brought under this subchapter with respect to the partnership.



## § 301.6223-1 (a) *Each partnership must have a partnership representative*



A partnership subject to subchapter C of chapter 63 of the Internal Revenue Code (subchapter C of chapter 63) for a partnership taxable year must designate a partnership representative for the partnership taxable year in accordance with this section. There may be only one designated partnership representative for a partnership taxable year at any time. The designation of a partnership representative for a partnership taxable year under this section remains in effect until the date on which the designation of the partnership representative is terminated by valid resignation (as described in paragraph (d) of this section), valid revocation (as described in paragraph (e) of this section), or a determination by the Internal Revenue Service (IRS) that the designation is not in effect (as described in paragraph (f) of this section). A designation of a partnership representative for a partnership taxable year under paragraphs (e) or (f) of this section supersedes all prior designations of a partnership representative for that year. If required by forms, instructions, and other guidance prescribed by the IRS, a partnership representative must update the partnership representative's contact information when such information changes. Only a person designated as a partnership representative in accordance with this section will be recognized as the partnership representative under section 6223. A power of attorney (including a Form 2848, Power of Attorney) may not be used to designate a partnership representative. See § 301.6223-2(a), (b), and (c) with regard to the binding effect of actions taken by the partnership representative. See § 301.6223-2(d) with regard to the sole authority of the partnership representative to act on behalf of the partnership. See paragraph (f) of this section for rules regarding designation of a partnership representative by the IRS.

## § 301.6223-1 (b) *Eligibility to serve as a partnership representative*



(1) *In general.* Any person (as defined in section 7701(a)(1)) that meets the requirements of paragraphs (b)(2) and (3) of this section, as applicable, is eligible to serve as a partnership representative, including a wholly owned entity disregarded as separate from its owner for federal tax purposes. A person designated under this section as partnership representative is deemed to be eligible to serve as the partnership representative unless and until the IRS determines that the person is ineligible. A partnership can designate itself as its own partnership representative provided it meets the requirements of paragraphs (b)(2) and (3) of this section.

## § 301.6223-1 (b) *Eligibility to serve as a partnership representative*



(2) *Substantial presence in the United States.* A person must have substantial presence in the United States to be the partnership representative. A person has substantial presence in the United States for the purposes of this section if —

- (i) The person makes themselves available to meet in person with the IRS in the United States at a reasonable time and place as determined by the IRS in accordance with § 301.7605-1; and
- (ii) The person has a United States taxpayer identification number, a street address that is in the United States and a telephone number with a United States area code.

## § 301.6223-1 (b) *Eligibility to serve as a partnership representative*



### (3) *Eligibility of an entity to be a partnership representative -*

(i) *In general.* A person who is not an individual may be a partnership representative only if an individual who meets the requirements of paragraph (b)(2) of this section is appointed by the partnership as the sole individual through whom the partnership representative will act for all purposes under subchapter C of chapter 63. A partnership representative meeting the requirements of this paragraph (b)(3) is an entity partnership representative, and the individual through whom such entity partnership representative acts is the designated individual. Designated individual status automatically terminates on the date that the designation of the entity partnership representative for which the designated individual was appointed is no longer in effect in accordance with paragraph (d), (e), or (f) of this section.

## § 301.6223–1 (b) *Eligibility to serve as a partnership representative*



(3) *Eligibility of an entity to be a partnership representative* —

(ii) *Appointment of a designated individual.* A designated individual must be appointed by the partnership at the time of the designation of the entity partnership representative in the manner prescribed by the IRS in forms, instructions, and other guidance. Accordingly, if the entity partnership representative is designated on the partnership return for the taxable year in accordance with paragraph (c)(2) of this section, the designated individual must be appointed by the partnership at that time. Similarly, if the entity partnership representative is designated under paragraph (e) of this section (regarding revocation and subsequent designation after revocation of a partnership representative), the designated individual must be appointed at that time. If the partnership fails to appoint a designated individual at the time and in the manner set forth in this paragraph (b)(3)(ii), the IRS may determine that the entity partnership representative designation is not in effect under paragraph (f) of this section.

## § 301.6223-1 (c) *Designation of partnership representative by the partnership*



(1) *In general.* The partnership must designate a partnership representative separately for each taxable year. The designation of a partnership representative for one taxable year is effective only for the taxable year for which it is made.

(2) *Designation.* Except in the case of a designation of a partnership representative (and the appointment of the designated individual, if applicable) after an event described in paragraph (d) of this section (regarding resignation), paragraph (e) of this section (regarding revocation by the partnership), or paragraph (f) of this section (regarding designation made by the IRS), or except as prescribed in forms, instructions, and other guidance, designation of a partnership representative (and the appointment of the designated individual, if applicable) must be made on the partnership return for the partnership taxable year to which the designation relates and must include all of the information required by forms, instructions, and other guidance, including information about the designated individual if paragraph (b)(3) of this section applies. The designation of the partnership representative (and the appointment of the designated individual, if applicable) is effective on the date that the partnership return is filed.

## § 301.6223-1 (d) *Resignation*



(1) *In general.* A partnership representative or designated individual may resign as partnership representative or designated individual, as applicable, for a partnership taxable year for any reason by notifying the IRS in writing of the resignation in accordance with forms, instructions, and other guidance prescribed by the IRS. A resigning partnership representative may not designate a successor partnership representative. A resigning designated individual may not designate a successor designated individual or partnership representative. No later than 30 days after the IRS receives a written notification of resignation, the IRS will send written confirmation of receipt of the written notification to the partnership and the resigning partnership representative (to the attention of the designated individual if appropriate). A failure by the IRS to send any notification under this paragraph (d) does not invalidate a valid resignation made pursuant to this paragraph (d). A failure by the partnership representative (or designated individual, if the designated individual is the person resigning) to satisfy the requirements of this paragraph (d) is treated as if there were no resignation, and the partnership representative designation (and designated individual appointment, if applicable) remains in effect until the designation (or appointment) is terminated by valid resignation (as described in this paragraph (d)), valid revocation by the partnership (as described in paragraph (e) of this section), or a determination by the IRS that the designation is not in effect (as described in paragraph (f) of this section). See § 301.6223-2 for binding nature of actions taken by the partnership representative or designated individual on behalf of a partnership representative, if applicable, prior to resignation.

## § 301.6223-1 (d) *Resignation*



(2) *Time for resignation.* A partnership representative or designated individual may submit the written notification of resignation described in paragraph (d)(1) of this section to the IRS only after the IRS issues a notice of administrative proceeding (NAP) under section 6231(a)(1) for the partnership taxable year for which the partnership representative designation is in effect or at such other time as prescribed by the IRS in forms, instructions, or other guidance. If the IRS withdraws the NAP pursuant to § 301.6231-1(f), any valid resignation by the partnership representative or designated individual under this paragraph (d) prior to the withdrawal of the NAP remains in effect.



## § 301.6223-1 (d) *Resignation*



(3) *Effective date of resignation.* A valid resignation is immediately effective upon the IRS's receipt of the written notification described in paragraph (d)(1) of this section. As of the effective date of the resignation —

(i) The resigning partnership representative (and designated individual, if applicable) may not take any action on behalf of the partnership with respect to the partnership taxable year affected by the resignation;

(ii) The partnership representative designation is no longer in effect with respect to the partnership taxable year affected by the resignation;

(iii) In the case of a resigning entity partnership representative, the appointment of the designated individual is no longer in effect with respect to the partnership taxable year affected by the resignation; and

(iv) In the case of a resigning designated individual, the designation of the entity partnership representative is no longer in effect with respect to the partnership taxable year affected by the resignation.

# § 301.6223-1 (e) *Revocation*



(1) *In general.* A partnership may revoke a designation of a partnership representative or appointment of a designated individual for a partnership taxable year for any reason by notifying the IRS in writing of the revocation in accordance with forms, instructions, and other guidance prescribed by the IRS. The partnership may make such revocation regardless of when and how the designation or appointment was made, except as provided in paragraph (e)(6) of this section (regarding designation by the IRS). The revocation must include the designation of a successor partnership representative (and the appointment of a designated individual, if applicable). In the case of a revocation of only the designated individual appointment, the partnership must designate a successor designated individual. No later than 30 days after the IRS receives a written notification of revocation submitted at the time described in paragraph (e)(2) of this section, the IRS will send written confirmation of receipt of the written notification to the partnership, the revoked partnership representative or, in the case of a revocation of only the appointment of a designated individual, to the revoked designated individual, and to the newly designated partnership representative. In the case of a revocation of an entity partnership representative, the notification will be sent to the entity partnership representative, to the attention of the designated individual. A failure by the IRS to send any notification under this paragraph (e) does not invalidate a valid revocation made pursuant to this paragraph (e). A failure by the partnership to satisfy the requirements of this paragraph (e), including failure to designate a successor, is treated as if no revocation has occurred and the partnership representative designation (and designated individual appointment, if applicable) remains in effect until the designation (or appointment) is terminated either by valid resignation (as described in paragraph (d) of this section), valid revocation by the partnership (as described in this paragraph (e)), or determination by the IRS that the designation is not in effect (as described in paragraph (f) of this section). See § 301.6223-2 for binding nature of actions taken by the partnership representative or designated individual on behalf of a partnership representative, if applicable, prior to revocation.

# § 301.6223-1 (e) *Revocation*



## (2) *Time for revocation* —

(i) *Revocation during an administrative proceeding.* Except as provided in paragraph (e)(2)(ii) of this section or in forms, instructions, or other guidance prescribed by the IRS, a partnership may revoke a designation of a partnership representative or appointment of a designated individual only after the IRS issues a notice of selection for examination or a NAP under section 6231(a)(1) for the partnership taxable year for which the designation or appointment is in effect. If the IRS withdraws the NAP pursuant to §301.6231-1(f), any valid revocation of a partnership representative designation or designated individual appointment under this paragraph (e) prior to the withdrawal of the NAP remains in effect.

(ii) *Revocation with an AAR.* The partnership may revoke a designation of a partnership representative or appointment of a designated individual for the taxable year prior to receiving a notice of selection for examination or a NAP by filing a valid administrative adjustment request (AAR) in accordance with section 6227 for a partnership taxable year. A partnership may not use the form prescribed by the IRS for filing an AAR solely for the purpose of revoking a designation of a partnership representative or appointment of a designated individual. See § 301.6227-1 for the rules regarding the time and manner of filing an AAR.

# § 301.6223-1 (e) *Revocation*



(3) *Effective date of revocation.* Except as described in paragraph (e)(6)(ii) of this section (regarding the effective date of a revocation of a partnership representative designated by the IRS under paragraph (f)(5) of this section), a valid revocation is immediately effective upon the IRS's receipt of the written notification described in paragraph (e)(1) of this section. A revocation of a partnership representative designation and a designation of a new partnership representative (and appointment of a new designated individual, if applicable) is effective on the date the partnership files a valid AAR. Similarly, a revocation of a designated individual appointment and appointment of a new designated individual is effective on the date the partnership files a valid AAR. As of the effective date of the revocation —

(i) The revoked partnership representative (and designated individual, if applicable) may not take any action on behalf of the partnership with respect to the partnership taxable year affected by the revocation;

(ii) The designation of the revoked partnership representative is no longer in effect, and the successor partnership representative designation (and designated individual appointment, if applicable) is in effect with respect to the partnership taxable year affected by the revocation;

(iii) In the case of a revoked entity partnership representative,; and  
the appointment of the designated individual is no longer in effect with respect to the partnership taxable year affected by the revocation

(iv) In the case of a revoked designated individual where the designation of the entity partnership representative has not been revoked, the revoked designated individual may not take any action on behalf of the partnership with respect to the partnership taxable year affected by the revocation, the appointment of the revoked designated individual is no longer in effect, and the appointment of the successor designated individual is in effect.

## § 301.6223-1 (e) *Revocation*



(4) Partners who may sign revocation. A revocation under this paragraph (e) must be signed by a person who was a partner at any time during the partnership taxable year to which the revocation relates or as provided in forms, instructions, and other guidance prescribed by the IRS.

## § 301.6223-1 (e) *Revocation*



(5) *Form of the revocation.* The written notification of revocation described in paragraph (e)(1) of this section must include the items described in this paragraph (e)(5). A notification of revocation described in paragraph (e)(1) of this section that does not include each of the following items is not a valid revocation:

(i) A certification under penalties of perjury that the person signing the notification is a partner described in paragraph (e)(4) of this section authorized by the partnership to revoke the designation of the partnership representative (or appointment of the designated individual, if applicable).

(ii) A statement that the person signing the notification is revoking the designation of the partnership representative (or appointment of the designated individual, if applicable);

(iii) A designation of a successor partnership representative (and appointment of a designated individual, if applicable) in accordance with this section and forms, instructions, and other guidance prescribed by the IRS; and

(iv) In the case of a revocation of an appointment of a designated individual, appointment of a successor designated individual in accordance with this section and forms, instructions, and other guidance prescribed by the IRS.

## § 301.6223-1 (e) *Revocation*



(6) *Partnership representative designated by the IRS* — (i) *In general.* If a partnership representative is designated (and a designated individual is appointed, if applicable) by the IRS pursuant to paragraph (f)(5) of this section, the partnership may only revoke that designation (or the appointment of the designated individual, if applicable) with the permission of the IRS, which the IRS will not unreasonably withhold.

## § 301.6223-1 (e) *Revocation*



(6) *Partnership representative designated by the IRS* —

(i) *In general.* If a partnership representative is designated (and a designated individual is appointed, if applicable) by the IRS pursuant to paragraph (f)(5) of this section, the partnership may only revoke that designation (or the appointment of the designated individual, if applicable) with the permission of the IRS, which the IRS will not unreasonably withhold.

(ii) *Effective date of revocation.* The effective date of any revocation submitted in accordance with paragraph (e)(6)(i) of this section is the date on which the IRS sends notification that the revocation is valid.



## § 301.6223-1 (e) *Revocation*



### (7) *Multiple revocations* —

(i) *In general.* The IRS may determine that a designation is not in effect under paragraph (f) of this section if:

(A) The IRS receives a revocation of a designation of a partnership representative or appointment of a designated individual, and

(B) Within the 90-day period prior to the date the revocation described in paragraph (e)(7)(i)(A) of this section was received, the IRS received another revocation for the same partnership taxable year.

(ii) *Time limitation.* The IRS may not determine that a designation is not in effect in accordance with paragraph (e)(7)(i) of this section later than 90

# § 301.6223-1 (f) *Designation of the partnership representative by the IRS*



(1) *In general.* If the IRS determines that a designation of a partnership representative is not in effect for a partnership taxable year in accordance with paragraph (f)(2) of this section, the IRS will notify the partnership that a partnership representative designation is not in effect. The IRS will also notify the most recent partnership representative for the partnership taxable year, except as described in paragraph (f)(2)(iii) of this section. In the case of an entity partnership representative, the notification will be sent to the entity partnership representative, to the attention of the designated individual. The determination that a designation is not in effect is effective on the date the IRS mails the notification. Except as described in paragraph (f)(4) of this section, the partnership may designate, in accordance with paragraph (f)(3) of this section, a successor partnership representative (and designated individual, if applicable) eligible under paragraph (b) of this section within 30 days of the date the IRS mails the notification. In the case of a resignation of a partnership representative, this notification may include the written confirmation of receipt described in paragraph (d)(1) of this section. See paragraph (f)(2)(iv) of this section. If the partnership does not designate a successor within 30 days from the date of IRS notification, the IRS will designate a partnership representative in accordance with paragraph (f)(5) of this section. A partnership representative designation made in accordance with paragraphs (c), (e), or (f) of this section remains in effect until the IRS determines the designation is not in effect. See § 301.6223-2 for binding nature of actions taken by the partnership representative or designated individual on behalf of a partnership representative, if applicable, prior to a determination by the IRS that the designation is not in effect.

# § 301.6223-1 (f) *Designation of the partnership representative by the IRS*



(2) *IRS determination that partnership representative designation not in effect.* The IRS may, but is not required to, determine that a partnership representative designation is not in effect. The IRS is not obligated to search for or otherwise seek out information related to the circumstances in which the IRS may determine a partnership representative designation is not in effect, and the fact that the IRS is aware of any such circumstances does not obligate the IRS to determine that a partnership representative designation is not in effect. The IRS may determine that the partnership representative designation is not in effect if the IRS determines that —

(i) The partnership representative or the designated individual does not have substantial presence as described in paragraph (b)(2) of this section;

(ii) The partnership failed to appoint a designated individual as described in paragraph (b)(3) of this section, as applicable;

(iii) The partnership failed to make a valid designation as described in paragraph (c) of this section;

(iv) The partnership representative or designated individual resigns as described in paragraph (d) of this section;

(v) The partnership has made multiple revocations as described in paragraph (e)(7) of this section; or

(vi) The partnership representative designation is no longer in effect as described in other published guidance.

## § 301.6223-1 (f) *Designation of the partnership representative by the IRS*



### *(3) Designation by the partnership during the 30-day period.*

Designation of a partnership representative (and appointment of a designated individual, if applicable) by the partnership during the 30-day period described in paragraph (f)(1) of this section must be made in accordance with forms, instructions, and other guidance prescribed by the IRS. If the partnership fails to provide all information required by forms, instructions, and other guidance, the partnership will have failed to make a designation (and appointment, if applicable). If the partnership does not fully comply with the requirement of this paragraph (f)(3) within the 30-day period described in paragraph (f)(1) of this section, the IRS will designate a partnership representative (and appoint a designated individual, if applicable).

## § 301.6223-1 (f) *Designation of the partnership representative by the IRS*



(4) *No opportunity for designation by the partnership in the case of multiple revocations.* In the event that the IRS determines a partnership representative designation is not in effect due to multiple revocations as described in paragraph (e)(7) of this section, the partnership will not be given an opportunity to designate the successor partnership representative prior to the designation by the IRS as described in paragraph (f)(5) of this section. However, see paragraph (e)(6) of this section regarding revocation of a partnership representative designated by the IRS

## § 301.6223-1 (f) *Designation of the partnership representative by the IRS*



(5) *Designation by the IRS* — (i) *In general.* The IRS designates a partnership representative under this paragraph (f)(5) by notifying the partnership of the name, address, and telephone number of the new partnership representative. If the IRS designates an entity partnership representative, the IRS will also appoint a designated individual to act on behalf of the entity partnership representative. The designation of a partnership representative (and appointment of a designated individual, if applicable) by the IRS is effective on the date on which the IRS mails the notification of the designation (and appointment, if applicable) to the partnership. The IRS will also mail a copy of the notification of the designation (and appointment, if applicable) to the new partnership representative (through the new designated individual, if applicable) that has been designated (and appointed, if applicable) by the IRS under this section.

# § 301.6223-1 (f) *Designation of the partnership representative by the IRS*



(5) *Designation by the IRS* — (ii) *Factors considered when partnership representative designated by the IRS.* The IRS will ordinarily consider one or more of the factors set forth in this paragraph (f)(5)(ii) when determining whom to designate as partnership representative. No single factor is determinative, and other than as described in paragraph (f)(5)(iii) of this section, the IRS may exercise its discretion to designate a person as partnership representative even if none of the factors are applicable to such person. The factors are not requirements for eligibility to be designated by the IRS as partnership representative; the only requirements for eligibility are described under paragraph (b) of this section. The IRS is not obligated to search for or otherwise seek out information related to the factors, and the fact that the IRS is aware of any information related to such factors does not obligate the IRS to designate a particular person. Although the IRS may designate any person to be the partnership representative, a principal consideration in determining whom to designate as a partnership representative is whether there is a reviewed year partner that is eligible to serve as the partnership representative in accordance with paragraph (b)(1) of this section or whether there is a partner at the time the partnership representative designation is made that is eligible to serve as the partnership representative. Other factors that will ordinarily be considered by the IRS in determining whom to designate as a partnership representative include, but are not limited to:

- (A) The views of the partners having a majority interest in the partnership regarding the designation;
- (B) The general knowledge of the person in tax matters and the administrative operation of the partnership;
- (C) The person's access to the books and records of the partnership;
- (D) Whether the person is a United States person (within the meaning of section 7701(a)(30)); and
- (E) The profits interest of the partner in the case of a partner.

## § 301.6223-1 (f) *Designation of the partnership representative by the IRS*



(5) *Designation by the IRS* — (iii) *IRS employees*. The IRS will not designate a current employee, agent, or contractor of the IRS as the partnership representative unless that employee, agent, or contractor was a reviewed year partner or is currently a partner in the partnership.



## § 301.6223-1 (g) *Reliance on forms required by this section*



The IRS may rely on any form or other document filed or submitted under this section as evidence of the designation, resignation, or revocation on such form and as evidence of the date on which such form was filed or submitted relating to a designation, resignation, or revocation.

## § 301.6223-2 *Binding effect of actions of the partnership and partnership representative*



(a) *Binding nature of actions by partnership and final decision in a partnership proceeding.* The actions of the partnership and the partnership representative taken under subchapter C of chapter 63 of the Internal Revenue Code (subchapter C of chapter 63) and any final decision in a proceeding brought under subchapter C of chapter 63 with respect to the partnership bind the partnership, all partners of the partnership (including partnership-partners as defined in § 301.6241-1(a)(7) that have a valid election under section 6221(b) in effect for any taxable year that ends with or within the taxable year of the partnership), and any other person whose tax liability is determined in whole or in part by taking into account directly or indirectly adjustments determined under subchapter C of chapter 63 (for example, indirect partners as defined in § 301.6241-1(a)(4)). For instance, a settlement agreement entered into by the partnership representative on behalf of the partnership, a notice of final partnership adjustment (FPA) with respect to the partnership that is not contested by the partnership, or the final decision of a court with respect to the partnership if the FPA is contested, binds all persons described in the preceding sentence.

§ 301.6223-2 *Binding effect of actions of the partnership and partnership representative*



(b) *Actions by the partnership representative before termination of designation.* A termination of the designation of a partnership representative because of a resignation under § 301.6223-1(d) or a revocation under § 301.6223-1(e), or as a result of a determination by the Internal Revenue Service (IRS) under § 301.6223-1(f) that the designation is not in effect, does not affect the validity of any action taken by that partnership representative during the period prior to such termination. For example, if a partnership representative properly designated under § 301.6223-1 consented to an extension of the period of limitations on making adjustments under section 6235(b) in accordance with § 301.6235-1(d), that extension remains valid even after termination of the designation of that partnership representative.

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(c) *Actions by the partnership representative upon withdrawal of notice of administrative proceeding.* If the IRS issues a notice of administrative proceeding (NAP) under section 6231(a)(1) and subsequently withdraws such NAP pursuant to § 301.6231-1(f), any actions taken by a partnership representative (or successor partnership representative after a change to the partnership representative that occurred after the issuance of the NAP and before the NAP was withdrawn) are binding as described in paragraph (a) of this section even though the NAP has been withdrawn and has no effect for purposes of subchapter C of chapter 63.

## § 301.6223-2 *Binding effect of actions of the partnership and partnership representative*



(d) *Partnership representative has the sole authority to act on behalf of the partnership - (1) In general.* The partnership representative has the sole authority to act on behalf of the partnership for all purposes under subchapter C of chapter 63. In the case of an entity partnership representative, the designated individual has the sole authority to act on behalf of the partnership representative and the partnership. Except for a partner that is the partnership representative or the designated individual, no partner, or any other person, may participate in an administrative proceeding without the permission of the IRS. The failure of the partnership representative to follow any state law, partnership agreement, or other document or agreement has no effect on the authority of the partnership representative or the designated individual as described in section 6223, § 301.6223-1, and this section. Nothing in this section affects, or otherwise restricts, the ability of a partnership representative to authorize a person to represent the partnership representative, in the partnership representative's capacity as the partnership representative, before the IRS under a valid power of attorney in a proceeding involving the partnership under subchapter C of chapter 63.

## § 301.6223-2 *Binding effect of actions of the partnership and partnership representative*



(d) *Partnership representative has the sole authority to act on behalf of the partnership - (2) Designation provides authority to bind the partnership*

(i) **Partnership representative.** A partnership representative, by virtue of being designated under section 6223 and § 301.6223-1, has the authority to bind the partnership for all purposes under subchapter C of chapter 63.

(ii) **Designated individual.** A partnership that is required to appoint a designated individual described under § 301.6223-1(b)(3)(i) acts through such designated individual. By virtue of being appointed as part of the designation of the partnership representative under § 301.6223-1, the designated individual has the sole authority to bind the partnership representative and therefore the partnership, its partners, and any other person as described in paragraph (a) of this section for all purposes under subchapter C of chapter 63 so long as the partnership representative designation and designated individual appointment are in effect.