



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

June 29, 2017

Control Number: LB&I-04-0617-003
Effective Date: July 3, 2017
Expiration Date: July 3, 2019
Affected IRM: 4.31 and 4.46

MEMORANDUM FOR ALL LB&I AND SB/SE FRONTLINE MANAGERS AND EXAMINERS

FROM: Douglas W. O'Donnell /s/ Douglas W. O'Donnell
Commissioner, Large Business and International Division

Mary Beth Murphy /s/ Mary Beth Murphy
Commissioner, Small Business/Self-Employed Division

SUBJECT: Interim Guidance on Initial Taxpayer Contact in Partnership Examinations and Elections into the Bipartisan Budget Act of 2015 (BBA) Centralized Partnership Audit Regime for tax periods beginning after November 2, 2015 and before January 1, 2018

Purpose: The purpose of this memorandum is to issue interim guidance to LB&I and SB/SE employees on initial contact with taxpayers in partnership examinations and elections into the BBA centralized partnership audit regime for tax periods beginning after November 2, 2015 and before January 1, 2018.

Background/Source(s) of Authority: Section 1101 of the BBA repealed the TEFRA partnership procedures and the Electing Large Partnership provisions replacing them with an entirely new centralized partnership audit regime. The centralized partnership audit regime generally provides for determination of adjustments, and assessment and collection of tax attributable to such adjustments, at the partnership level. In general, the centralized partnership audit regime is effective for tax years beginning on or after January 1, 2018. Section 1101(g)(4) of the BBA further provides that partnerships may "early elect in" to have the BBA centralized partnership audit regime apply to partnership returns filed for tax periods beginning after November 2, 2015 and before January 1, 2018. Per Treasury Regulations §301.9100-22T, generally this election may only be made within 30 days of the date the IRS first notifies a partnership in writing that its return has been selected for examination.

Procedural Change: Letter 2205-D must be mailed for the initial taxpayer contact in all partnership examinations. See the attached *Examiner Guidance for Elections into the Bipartisan Budget Act of 2015 Centralized Partnership Audit Regime for Tax Periods Beginning After November 2, 2015 and Before January 1, 2018*.

Effect on Other Documents: This guidance will be incorporated into IRM 4.31 and 4.46 by a date not to exceed two years from the date of this memo.

If you have questions or need additional information, please contact David Caizzi, LB&I or Janice Mueller, SB/SE.

Attachment:

Examiner Guidance for Elections into the Bipartisan Budget Act of 2015 Centralized Partnership Audit Regime for Tax Periods Beginning After November 2, 2015 and Before January 1, 2018

Distribution:

[IRS.gov](http://www.irs.gov)

<http://www.irs.gov>

Attachment - IG Control # LB&I-04-0617-003

**Examiner Guidance for
Elections into the Bipartisan Budget Act of 2015
Centralized Partnership Audit Regime
For Tax Periods Beginning After November 2, 2015 and Before January 1, 2018**

Background

Section 1101 of the Bipartisan Budget Act of 2015 (BBA) repealed the TEFRA partnership procedures and the Electing Large Partnership provisions and replaced them with an entirely new centralized partnership audit regime. The centralized partnership audit regime generally provides for determination of adjustments, and assessment and collection of tax attributable to adjustments, at the partnership level unless certain elections are made by the partnership.

In general, the centralized partnership audit regime is effective for tax years beginning on or after January 1, 2018.

Early Elect In - Temporary Regulations

Section 1101(g)(4) of the BBA provides that a partnership may elect for the centralized partnership audit regime to apply to any return of a partnership filed for tax periods beginning after November 2, 2015 (the date of the enactment of the BBA) and before January 1, 2018 ("Early Elect In"). Temporary regulations (§301.9100-22T) that provide the time, form and manner for making the election under Section 1101(g)(4) were published on August 5, 2016 as Treasury Decision (TD) 9780.

Examiners and their managers need to be aware of these temporary regulations, in the event they begin the examination of a partnership return for tax periods beginning after November 2, 2015 and before January 1, 2018 and the taxpayer wants to make the election under Section 1101(g)(4).

Who can make this "Early Elect In" election?

Either the Tax Matters Partner (TMP) or an individual authorized to sign the partnership return for the taxable year under examination is authorized to make this election for any partnership return filed for tax periods beginning after November 2, 2015 and before January 1, 2018. A Power of Attorney, in general, does not have the authority to make this election.

The fact that an individual dates and signs the election statement under penalty of perjury shall be prima facie evidence that the individual is authorized to make the election on behalf of the partnership. See §301.9100-22T(b)(2)(ii).

When can the election be made?

- This election may be made within 30 days of the date the IRS first notifies the partnership in writing that the return has been selected for examination. This election can be made for any timely filed, late filed or non-filed partnership return as long as the election is made within 30 days from the date of written notification of the selection for examination. The date that the return is actually filed or a substitute for return is prepared does not matter for purposes of this election. The election must be provided to the individual identified in such notice as the IRS contact for the examination. §301.9100-22T(a) states that partnerships may not request an extension of time for making this election; or
- After January 1, 2018, this election may also be made when filing an Administrative Adjustment Request (AAR) under Section 6227 as amended by the BBA for tax periods beginning after November 2, 2015 and before January 1, 2018. Guidance for elections made when filing an AAR after January 1, 2018 is not yet available.

This interim guidance focuses on the requirements and procedures for elections made in response to a notice of selection for examination.

Initial contact letter (Notice of Selection for Examination)

- A new Initial Contact Letter (Letter 2205-D) has been developed for SB/SE & LB&I examiners to use when notifying any partnerships that they were selected for examination.
- The new letter should be used to initiate contact with all partnerships under examination.
- Letter 2205-D is available on the publishing website.

Note: If no election is made in response to Letter 2205-D, follow the existing TEFRA or NonTEFRA procedures accordingly.

When can't the election be made?

This election may not be made if, prior to making such election:

- An AAR has been filed (or deemed to have been filed) on behalf of a TEFRA partnership under Section 6227(c) (prior to amendment by the BBA), or
- An amended return of a NonTEFRA partnership has been filed (or deemed to have been filed).

For the rules regarding when an AAR or amended return is deemed to have been filed, see §301.9100-22T(c)(4).

How can a partnership make this election after the issuance of the Letter 2205-D?

FR 61 To make the election, the partnership can use Form 7036, Election Under Section 1101(g)(4) of the Bipartisan Budget Act of 2015.

- FR 61** If Form 7036 is not used, the partnership may prepare its own statement:
- The election must be in writing and include a statement that the partnership is electing to have the centralized partnership audit regime enacted by the BBA apply to the partnership return for the taxable year identified in the IRS Letter 2205-D.
 - "Election under Section 1101(g)(4)" must be at the top of the statement.
 - The statement must be dated and signed by the TMP or an individual that has the authority to sign the partnership return for the taxable year under examination.

The Form 7036 or statement must be provided to the examiner conducting the audit within 30 days from the date of the Letter 2205-D. If the election is mailed, the date of the postmark should be used to determine if timely filed.

What information must be included in the election statement?

Pursuant to §301.9100-22T(b)(2)(ii), the election statement must include:

- FR 61** The partnership's name, taxpayer identification number and partnership taxable year to which the election statement applies;
- FR 61** The name, address, daytime telephone number and taxpayer identification number of the partnership representative under Section 6223 (as amended by the BBA) for the taxable year to which the election statement applies;
- FR 61** Representations that the partnership:
- Is not insolvent and does not reasonably anticipate becoming insolvent before resolution of any adjustment for the partnership taxable year for which the election is being made;
 - Is not currently and does not reasonably anticipate becoming subject to a bankruptcy petition (voluntary or involuntary) under Title 11 of the United States Code; and
 - Has sufficient assets, and reasonably anticipates having sufficient assets, to pay a potential imputed underpayment that may be determined during the partnership examination;
- FR 61** The name, taxpayer identification number, address and telephone number of the individual who signs the election statement; and
- FR 61** A representation signed under penalties of perjury that the individual signing the election statement is duly authorized to make the election and that, to the best of their knowledge and belief, the election statement is true, correct and complete.

Can this election be revoked?

Once made, this election may only be revoked with the consent of the Internal Revenue Service. See §301.9100-22T(a). Any request for revocation should be coordinated with Counsel.

What should an examiner do if they receive an election?

- FR 81** Immediately notify the IRS “BBA Point(s) of Contact (BBA POC)” designated to:
 - Monitor elections; and/or
 - Provide subject matter expertise regarding the BBA centralized partnership audit regime.
- FR 81** Verify that no AAR or amended return was filed (or deemed to have been filed) by the partnership for the partnership taxable year for which an election is being made.
- FR 81** If Form 7036 is used by the taxpayer to make the election, ensure all required elements are properly completed.
- FR 81** If Form 7036 is not used, ensure the election statement complies with the requirements of §301.9100-22T as previously discussed.
- FR 81** If additional information is needed, and time permitting, the taxpayer should be notified as soon as possible. All required information must be received within 30 days of the date of the IRS notice of selection for examination for the election to be valid. **There is no extension to this 30-day period.**
- FR 81** Confer with your manager and determine whether the election statement is valid. If so, provide a copy of the valid election statement to the BBA POC.
- FR 81** If the election is invalid, contact the BBA POC for next steps and follow the existing TEFRA or NonTEFRA procedures accordingly.

Case File Documentation and ERCS/AIMS Updates

- FR 81** Complete Items 1, 2, and 3 on Form 13813, Partnership Procedures Check Sheet.
- FR 81** Notate activity record that election was received, reviewed, etc., and that a copy was provided to the BBA POC.
- FR 81** Ensure ERCS/AIMS is updated as follows:
 - Set TEFRA indicator to “N” for NonTEFRA.
 - Set Aging Reason Code to “100”. (This Aging Reason Code will allow us to identify partnerships that elect into the BBA centralized partnership audit regime for tax periods beginning after November 2, 2015 and before January 1, 2018.)
- FR 81** Associate election with related items in the flow-thru administrative file or workpapers:
 - For LB&I, use SAIN 724
 - For SB/SE, use Section 600

What should the examiner NOT do if the election is valid?

- FR 81** Do not issue a TEFRA Notice of Beginning of Administrative Proceeding (NBAP). The NBAP only applies to TEFRA examinations.
- FR 81** Do not prepare a TEFRA Partnership Control System (PCS) Linkage Package. Current PCS linkage requirements only apply to partnership examinations subject to TEFRA/NonTEFRA rules. PCS linkage is not required for partnerships that elect into the BBA centralized partnership audit regime for tax periods beginning after November 2, 2015 and before January 1, 2018.

Wait at least 30 days after receipt of valid election before issuing any notice

- IRS must wait at least 30 days after a valid election is received before issuing a notice of administrative proceeding (NAP) in case the partnership wants to file an AAR under Section 6227 as amended by the BBA.
- During this 30-day period, conduct a cursory check to ensure that the partnership representative identified on Form 7036 or other election statement meets the requirements of §301.9100-22T(b)(2)(ii)(D). This cursory check will include basic research to ensure the name, taxpayer identification number, address, and daytime telephone number of the partnership representative are correct.

Partnership Representative

Under Section 6223 as amended by the BBA, each partnership must designate a “partnership representative” with a substantial presence in the United States who shall have the sole authority to act on behalf of the partnership. In addition, the partnership and its partners are bound by any actions taken by the partnership and the partnership representative.

NOTE: The partnership representative is separate and distinct from any individual that may be given Power of Attorney (POA) to represent the partnership before the Internal Revenue Service.

Issue Notice of Administrative Proceeding (NAP)

- A NAP (Letter 5893) must be mailed to the partnership.
- A separate NAP (Letter 5893-A) must be mailed to the partnership representative.
- Both notices are required by statute to be mailed. IRS policy requires that both mailings be certified. (The U. S. Postal Service Certified Mail Receipt [Postal Service Form 3800] must be included in the SAIN 724 [LB&I] or Section 600 [SB/SE].)

NOTE: Once the NAP is mailed, the partnership may not file an AAR. See Section 6227(c) as amended by the BBA.

Proceed with your Examination

- Once the NAPs have been mailed and examiners proceed with the audit, they should contact the BBA POC if there are any questions about BBA.
- If problems arise whereby the designated partnership representative is unreachable, unresponsive, or otherwise uncooperative, contact the BBA POC for guidance.
- Examiners must contact the BBA POC for guidance on issuing a summary report to the taxpayer before proposing adjustments.