



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

OFFICE OF  
CHIEF COUNSEL

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INTERNAL REVENUE SERVICE NATIONAL OFFICE FIELD SERVICE ADVICE

MEMORANDUM FOR STEVEN J. MOPSICK  
ASSOCIATE DISTRICT COUNSEL CC:WR:NCA:SAC

FROM: DEBORAH A. BUTLER  
ASSISTANT CHIEF COUNSEL CC:DOM:FS

SUBJECT: Consistent Agreements

This Field Service Advice responds to your memorandum dated September 17, 1998. Field Service Advice is not binding on Examination or Appeals and is not a final case determination. This document is not to be cited as precedent.

LEGEND

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ISSUES

1. Whether modified language recommended by this office should be substituted in consistent agreements previously executed by taxpayers but not yet countersigned for the Commissioner.
2. Whether an agreement entered into using the modified language recommended by this office constitutes a consistent agreement.
3. Whether agreeing to an oral request for consistent agreement constitutes a new original settlement for purposes of allowing a new consistent settlement period.

CONCLUSIONS

1. Though we recommend use of the modified language in any future agreements, in those situations in which the taxpayer has previously

executed an agreement that has yet to be countersigned, we do not believe the taxpayer should be required to execute a new agreement.

2. The revised language does not change the terms of settlement, and accordingly, constitutes a consistent agreement.
3. The acceptance of an oral request for consistent agreement without a timely written component results in a new settlement agreement, thereby providing an additional period within which to request consistent agreement.

## FACTS

The National Office recently provided revised settlement agreement and consistent agreement language to be used in entering into agreements during the proceedings with regard to A. Subsequently, your office located several consistent agreements that were executed by taxpayers prior to your office being provided with the modified forms, but these documents have not yet been countersigned for the Commissioner. Among these requests for consistent agreement is a record of an oral request for consistent agreement.

## LAW AND ANALYSIS

In 1982, Congress enacted the TEFRA unified audit and litigation procedures to simplify and streamline the partnership audit, litigation, and assessment process. The underlying principle of TEFRA is that "the tax treatment of items of partnership income, loss, deductions, and credits will be determined at the partnership level in a unified partnership proceeding rather than separate proceedings with the partners." Conf. Rep. No. 97-248 (1982). Partners are generally required to report items in a manner consistent with partnership treatment, and the Service may examine the partnership as an entity, rather than conduct separate examinations as to each of the partners. Where applicable, the TEFRA provisions either supplant or augment the general administrative provisions.

To promote consistency among partners in the same partnership, Congress enacted I.R.C. § 6224(c)(2), which permits taxpayers to enter into "consistent agreements." To the extent here relevant, I.R.C. § 6224(c)(2) provides:

OTHER PARTNERS HAVE RIGHT TO ENTER INTO CONSISTENT AGREEMENTS.--If the Secretary enters into a settlement agreement with any partner with respect to partnership items for any partnership taxable year, the Secretary shall offer to any other partner who so requests settlement terms for the partnership taxable year which are consistent with those contained in such settlement agreement.

Under the plain language of the statute, if the Service enters into a settlement agreement, then any other partner in the same partnership may request settlement terms that are consistent with the source agreement. In the event of such a request, the Service is required, by law, to offer consistent settlement terms. In defining what is subject to consistent settlement, Temp. Treas. Reg. § 301.6224(c)-3T(b) expressly provides that “‘Consistent’ settlement terms are those based on the same determinations with respect to partnership items.”

Simply stated, the “consistent settlement rule” allows a partner to request a consistent agreement within a specified time frame from the date a settlement agreement was executed. By necessity, this provision forces a distinction between a “settlement agreement” and a “consistent agreement”. Though neither the statute nor the regulations define these terms, there is a fundamental difference between the two types of agreements: a settlement agreement is an agreement entered into by mutual consent, whereas a consistent agreement is an agreement that the Service is required by law to execute. A settlement agreement gives rise to a period of time within which a consistent agreement may be requested, whereas a consistent agreement does not vest any other partner with a right of settlement. Because of the effect of settlement agreements on the rights of other partners to request consistent terms, it is important to identify when the Service has entered into a settlement agreement.

#### Issue 1

The National Office previously provided revised settlement forms to be used in this case. These forms were revised to provide more precise wording regarding the authority under which agreement is made as well as other refinements to the language of the form. For example, “agreements” are referred to as either a “settlement” or a “consistent settlement”. These types of modifications are superficial and do not provide sufficient cause to require taxpayers to execute new settlements. Accordingly, we recommend that the forms presently in our possession be countersigned for the Commissioner.

#### Issue 2

As noted above, Temp. Treas. Reg. § 301.6224(c)-3T(b) defines “consistent settlement terms” as settlement terms with respect to “determinations with respect to partnership items.” In making changes to the settlement forms used in the A settlements, the National Office did not alter any determinations with respect to partnership items. Partners seeking “consistent settlement terms” will execute a consistent agreement form that is identical to the original settlement with regard to the determinations of partnership items. The form differs only to the extent it uses more precise wording as to the source from which the authority to enter into the

agreement is derived. Because the agreements executed on the revised forms are consistent agreements, a new period for requesting a consistent agreement will not arise.

### Issue 3

The right to consistent settlement is dependent upon a timely request from the taxpayer made in the proper manner. The manner for requesting a consistent agreement is set forth in Temp. Treas. Reg. § 301.6224(c)-3T, which provides:

- (1) In general. A partner desiring settlement terms consistent with the terms of any settlement agreement entered into between any other partner and the Service shall submit a written statement to the Internal Revenue Service office that entered into the settlement.
- (2) Contents of statement. Except as otherwise provided in instructions to the taxpayer from the Service, the written statement described in paragraph (c)(1) of this section shall--
  - (i) Identify the statement as a request for consistent settlement terms under section 6224(c)(2),
  - (ii) Contain the name, address, and taxpayer identification number of the partnership and of the partner requesting the settlement offer (and, in the case of an indirect partner, of the pass-thru partner through which the indirect partner holds an interest),
  - (iii) Identify the earlier agreement to which the request refers, and
  - (iv) Be signed by the partner making the request.
- (3) Time for filing request. The statement shall be filed not later than the later of--
  - (i) The 150th day after the day on which the notice of final partnership administrative adjustment is mailed to the tax matters partner, or
  - (ii) The 60th day after the day on which the settlement was entered into.

(Emphasis added.)

This regulation allows consistent agreements when a taxpayer files a timely written request. The regulation also sets forth what is required to be contained in the written statement; however, the regulation simultaneously permits the Service to alter the requirements as to what must be contained in the statement. For our purposes, it is notable that neither the paragraph requiring a written statement nor the provision setting forth the time within which such a statement must be filed allows for varying instructions by the Service. Under a strict reading of the regulations, an oral request for consistent settlement is insufficient; and that failure to submit a timely written request divests the taxpayer of any consistent settlement

right. Though this is a narrow reading of the regulations, taxpayers could use this same argument to give rise to a new consistent settlement period. If an oral request were honored and an agreement was later executed, another partner could assert that this agreement, because it is not compelled by the statute or regulations, is a settlement agreement. If deemed to be a settlement agreement, then a new period for seeking consistent terms would arise.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

If you have any further questions, please call (202) 622-7950.

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