

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, except for paragraphs (p)(2) and (r)(1), that are applicable on or after October 4, 2001.

[T.D. 8698, 61 FR 67459, Dec. 23, 1996, as amended by T.D. 8808, 64 FR 3840, Jan. 26, 1999; T.D. 8965, 66 FR 50558, Oct. 4, 2001]

§ 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.

[T.D. 8698, 61 FR 67462, Dec. 23, 1996]

§ 301.6231(a)(12)-1 Special rules relating to spouses.

(a) *Spouses holding a joint interest*—(1) *In general.* Except as otherwise provided in this section, spouses holding a joint interest in a partnership shall be treated as separate partners for purposes of subchapter C of chapter 63 of the Internal Revenue Code. Thus, both spouses may participate in administrative and judicial proceedings. The term *joint interest* includes tenancies in common, joint tenancies, tenancies by the entirety, and community property.

(2) *Identification of joint interest.* For purposes of this section, an interest shall be treated as a joint interest in a partnership only if both spouses are identified on the partnership return or are identified as partners entitled to notice as provided in § 301.6223(c)-1(b).

(3) *Failure to identify both spouses as partners.* If both spouses are not identified as set forth in paragraph (a)(2) of

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this section, then the partnership interest shall be treated as separately owned by the identified spouse.

(4) *Example.* The following example illustrates the application of paragraph (a)(3) of this section:

Example. Wife owns an interest in ABC Partnership and is identified on the Schedule K-1 of the partnership return. Wife and Husband live in a community property state. The partnership return of ABC partnership does not identify Husband, and Husband is not identified as a partner entitled to notice as provided in § 301.6223(c)-1(b). Pursuant to paragraph (a)(3) of this section, the partnership interest of Wife shall be treated as separately owned by Wife.

(b) *Notice and counting rules—(1) In general.* Except as provided in paragraph (b)(2) of this section, for purposes of applying section 6223 (relating to notice to partners of proceedings) and section 6231(a)(1)(B) (relating to the exception for small partnerships), spouses holding a joint interest in a partnership shall be treated as one partner. Except as provided in paragraph (b)(2) of this section, the Internal Revenue Service or the tax matters partner may send any required notice to either spouse.

(2) *Identified spouse entitled to notice.* For purposes of applying section 6223 (relating to notice to partners of proceeding) for a partnership taxable year, an individual who holds a joint interest in a partnership with a spouse who is entitled to notice under section 6223 shall be entitled to receive separate notice under section 6223 if such individual—

(i) Is identified as a partner on the partnership return for that taxable year; or

(ii) Is identified as a partner entitled to notice as provided in § 301.6223(c)-1(b).

(c) *Conversion of partnership items—(1) In general.* If spouses holding a joint interest in a partnership are treated as separate partners under this section, then section 6231(b) (relating to the conversion of partnership items) shall be applied separately to each spouse.

(2) *Example.* The following example illustrates the application of paragraph (c) of this section:

Example. Husband and Wife own a joint interest in XYZ Partnership. The partnership return identifies both spouses on the Schedule K-1. Under this section, each spouse is treated as a separate partner. If Wife enters into a settlement agreement, Wife's partnership items convert to nonpartnership items pursuant to section 6231(b)(1)(C). Accordingly, Wife no longer has the right to participate in the partnership proceeding subsequent to entering into the settlement agreement. Pursuant to paragraph (c) of this section, however, the partnership items of Hus-

band are not affected by the conversion of the partnership items of Wife, and Husband continues to have the right to participate in the partnership proceeding. This result is the same regardless of whether the partnership items are reported on a joint return or on separate returns.

(d) *Cross-reference.* See § 301.6231(a)(2)-1(a) for special rules relating to spouses who file joint returns with individuals holding a separate interest in a partnership.

(e) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6231(a)(12)-1T contained in 26 CFR part 1, revised April 1, 2001.

[T.D. 8965, 66 FR 50559, Oct. 4, 2001]

§ 301.6231(c)-1 Special rules for certain applications for tentative carryback and refund adjustments based on partnership losses, deductions, or credits.

(a) *Application subject to this section.* This section applies in the case of an application under section 6411 (relating to tentative carryback and refund adjustments) based on losses, deductions, or credits of a partnership if the Commissioner, or the Commissioner's delegate, determines, after review of the available relevant information, that it is highly likely that a person described in section 6700(a)(1) made, with respect to the partnership—

(1) A gross valuation overstatement; or

(2) A false or fraudulent statement with respect to the tax benefits to be secured by reason of holding an interest in the partnership that would be subject to a penalty under section 6700 (relating to penalty for promoting abusive tax shelters, etc.). This section applies only with respect to an application based upon the original reporting on the partner's income tax return of partnership losses, deductions, or credits. Thus, this section does not apply to a request for administrative adjustment under section 6227 through which a partner seeks to change the partner's reporting of partnership items on the partner's income tax return (or on an earlier request for administrative adjustment).