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Signing partnerships' returns and other tax documents

From Robert Venables, CPA, J.D., LL.M., Fairlawn, Ohio

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Editor: Robert Venables, CPA, J.D., LL.M.

The signing of a tax return or other document may seem like a mundane task, and not much thought may go into who is the appropriate person to be signing a particular document. A recent Chief Counsel Advice memorandum (CCA), however, serves as a reminder of the importance of ensuring the proper person is signing partnership returns and other tax documents filed with the IRS. Different areas of the Code address who has authority to sign or act on behalf of a partnership. These sections

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highlight that a person authorized to sign a particular document may not be authorized to sign all documents or in all situations.

Signing a partnership return

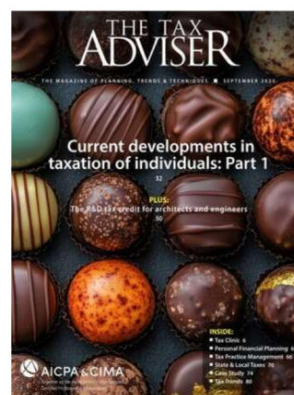
Sec. 6031(a) provides a partnership shall “make a return for each taxable year,” and Sec. 6063 specifies that this return “shall be signed by any one of the partners.” Regs. Sec. 1.6063–1(b) adds, “A partner’s signature on a return, statement, or other document made by or for a partnership of which he is a member shall be prima facie evidence that such partner is authorized to sign such return, statement, or other document.” This seems straightforward; however, it gets more nuanced.

While the instructions to Form 1065, *U.S. Return of Partnership Income*, state the general rule that the return must be signed by a partner or limited liability company (LLC) member, the instructions also address who should sign a partnership return in certain circumstances: “When a return is made for a partnership by a receiver, trustee, or assignee, the fiduciary must sign the return, instead of the partner or LLC member.” A more common example is if the partner is not an individual but an entity. In this situation, the instructions state that “an individual who is authorized under state law to act for the entity partner must sign the partnership return.” The rationale in this situation is outlined nicely in CCA 201945027:

Generally, authority to sign a tax document on behalf of an entity follows authority to sign a return for that entity. Therefore, a corporation officer’s signature of a partnership return, where the corporation is a partner of the partnership, is prima facie valid, and the Service does not have to verify that the signee is authorized to sign.

Earlier versions of the Form 1065 instructions, prior to 2017, required a general partner or LLC member—manager to sign the return. The rationale for this more

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restrictive requirement was addressed in Field Service Advice Memorandum 1993–747, which cited General Counsel Memorandum 38781: “Although the statute and regulation do not specify, it is Service position that only a general partner may sign the partnership return. ... Therefore, the signature instructions accompanying the Form 1065 mandate that only a general partner may execute the return.” Based on the updated language in the Form 1065 instructions, the Service’s position appears to have changed and now follows the plain language of Sec. 6063.

Partnership election-only filing

Filing and signature requirements for partnerships, such as certain foreign partnerships, that have no filing obligation but wish to make an election affecting the computation of taxable income are found in Regs. Sec. 1.6031(a)-1(b)(5). The regulation specifies that a return filed “solely to make an election is not a partnership return. Thus, such a return is not a return filed under section 6031(a) ... (except regarding the specific election issue).”

The Regs. Sec. 1.6031(a)-1(b)(5) signature requirement differs from Sec. 6063, as it requires the return must be signed by:

- (i) Each partner that is a partner in the partnership at the time the election is made; or
- (ii) Any partner of the partnership who is authorized (under local law or the partnership’s organizational documents) to make the election and who represents to having such authorization under penalties of perjury.

If authority to make such an election is not given to a particular partner, then every partner in the partnership would be required to sign the return. As many tax preparers can attest, getting a return or electronic filing authorization signed by a single partner, let alone every partner, can at times feel like a monumental task. Therefore, confirming that either the partnership’s organizational documents or local law grants authority to a partner or partners to make any necessary

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elections can greatly simplify the filing process as well as help ensure that the elections can be timely made.

Authority to act on behalf of a partnership under the BBA rules

Sec. 6223(a), as amended by the Bipartisan Budget Act of 2015 (BBA), P.L. 114–74, dictates that “[e]ach partnership shall designate ... 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.” As called out directly in the Code section, the partnership representative does not have to be, and is often not, a partner in the partnership.

Regs. Sec. 301.6223–1(b)(3)(i) clarifies that an entity may also be the partnership representative. However, “[a] designated individual must be appointed by the partnership at the time of the designation of the entity partnership representative” (Regs. Sec. 301.6223–1(b)(3)(ii)). A designated individual is defined by the regulation as “the individual through whom such entity partnership representative acts” (Regs. Sec. 301.6223–1(b)(3)(i)). Eligibility rules as well as the process of appointing and/or terminating a partnership representative designation is beyond the scope of this item, but the importance of the designation should not be overlooked. This is highlighted in Regs. Sec. 301.6223–2(a):

The actions of the partnership and the partnership representative ... bind the partnership, all partners 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 instance, a settlement agreement entered into by the partnership representative on behalf of the partnership ... binds all persons described in the preceding sentence.

The partnership representative not only can bind the partnership and partners through its actions or inactions

but also “has the sole authority to act on behalf of the partnership for all purposes under subchapter C of chapter 63” (Regs. Sec. 301.6223–2(d)(1)). Furthermore, this authority is not limited by “state law, partnership agreement, or other document or agreement” (id.). While Regs. Sec. 301.6223–2(d)(2)(i) does limit the binding authority of the partnership representative to only purposes under Subchapter C of Chapter 63 (Secs. 6221—6241), such authority can have significant implications for the partnership and its partners. One such example is the partnership representative’s ability to consent to an extension of the period of limitation on making adjustments under Sec. 6235(b) (Regs. Sec. 301.6223–2(b)).

The recent CCA

CCA 202505027, released in January 2025, addressed whether consents to extend the time to make partnership adjustments were invalid if the person who signed Form 872–M, *Consent to Extend the Time to Make Partnership Adjustments*, was different than the designated individual of the entity partnership representative named on the partnership’s 2018 and 2019 returns. In concluding that the consents were invalid, the CCA relied on the fact that “[s]ection 6223(a) provides that the [partnership representative] has the sole authority to act on behalf of the partnership.”

Why is a signature so important?

In CCA 202505027, the partnership had filed its 2018 and 2019 returns on Sept. 13, 2019, and Sept. 14, 2020, respectively. As the ruling pointed out, “Under section 6235(a), the Service generally has three years from the date a return is filed or its original due date, whichever comes later, to make a proposed adjustment”; however, this date “can be extended by agreement pursuant to section 6235(b).” Therefore, without a valid consent to extend such dates, the proposed adjustments would have had to be made by Sept. 13, 2022, for the partnership’s 2018 return and Sept. 14, 2023, for its 2019 return.

In this situation, four separate consents to extend the date were signed. The last of the consents was signed

on Aug. 6, 2024, and extended the period of limitation for the partnership's 2018 and 2019 returns until April 30, 2026. Since such consents were invalid, the period of limitation for the Service to make proposed adjustments to the partnership's 2018 and 2019 returns had already expired. As such, the Service would be prohibited from making any adjustments.

In most scenarios, the result reached in this CCA would be taxpayer-friendly, assuming the proposed adjustments made by the IRS are unfavorable. However, this will not always be the case. Going back to the earlier discussion of who can sign partnership returns, a failure of a partner to sign the return could have significant ramifications. CCA 201425011 addressed the issue of whether a return not signed by a partner or LLC member is a valid return. In concluding the return was not valid, the memorandum stated:

In *Beard v. Commissioner* ... the Tax Court listed four criteria for determining “whether a document is sufficient for statute of limitations purposes.” One of the criteria is that “the taxpayer must execute the return under penalties of perjury.” ... Thus, a partnership return signed by a return preparer on the partnership signature line is not a valid return.

As a result, a partnership return invalidated by an erroneous signature would not start the running of the general three-year period of limitation in Sec. 6235(a). Further highlighted in CCA 200907030, authorizing a nonpartner to sign a return on behalf of the partnership in an operating agreement “would be irrelevant if the person who signed was not a ‘partner’ as required by the statute” since “[t]he operating agreement cannot repeal the statute.” If the period of limitation for the Service to make proposed adjustments never starts because the return was invalid, then the general three-year period will never expire.

Final thoughts

The signing of a tax return or other tax form is often the last step prior to its submission. This may occur at or

near the filing deadline or after considerable effort has been invested in its preparation. No one wants to miss a deadline because a signature could not be obtained. However, as addressed in the recent CCA as well as prior cases and rulings, a failure to obtain the proper signature on a partnership return or other form can have significant consequences for the partnership, its partners, or the government. Therefore, taxpayers and their advisers should ensure that tax returns and other filings are signed by a partner, partnership representative, or authorized person as required. As with so many of the partnership rules, the answer to who is the correct person to sign a particular tax form is: *It depends!*

Editor

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By granting them a profits interest, entities taxed as partnerships can reward employees with equity. Mistakes, however, could cause challenges from taxing authorities.

TAX CLINIC

Proposed regulations issued on retirement catch-up contributions

Office of Chief Counsel
Internal Revenue Service
memorandum

Number: **202505027**

Release Date: 1/31/2025

CC:PA:06:

POSTF-115312-24

UILC: 6223B.00-00, 6235B.00-00, 6235B.01-00

date: October 04, 2024

to:

(Large Business & International)

from: , Procedure & Administration, Branch 6
Procedure & Administration, Branch 6

subject:

This Chief Counsel Advice responds to your request for assistance. This advice may not be used or cited as precedent.

ISSUE

If the designated individual (DI) of an entity partnership representative (PR), who was named on the 2018 and 2019 Forms 1065, *U.S. Return of Partnership Income*, is different from the individual who signed the Forms 872-M, *Consent to Extend the Time to Make Partnership Adjustments*, are the extensions invalid?

SHORT ANSWER

Yes. Section 6223(a) provides that the PR has the sole authority to act on behalf of the partnership. The extensions are invalid because they were not signed by the designated PR/DI.

FACTS

A. 2018 and 2019 Forms 1065

The partnership in this case, , filed Form 1065, *U.S. Return of Partnership Income*, for the taxable period ending December 31, 2018 (the 2018 Form 1065). did not elect out of the Bipartisan Budget Act of 2015 (BBA)

audit rules. The 2018 Form 1065, Schedule B, identifies the designated PR as an individual, _____, and the DI for the PR as _____. The taxpayer identification number for the designated PR that was provided was _____, which corresponds to an entity, _____.

The following year, _____ filed its Form 1065 for the taxable period ending December 31, 2019 (the 2019 Form 1065). _____ did not elect out of the BBA audit rules. The 2019 Form 1065, Schedule B, identifies the PR as an entity, _____, and the DI for the PR as _____.

B. Forms 872-M

On October 27, 2021, _____ signed a Form 872-M, *Consent to Extend the Time to Make Partnership Adjustments*, for the Partnership for the 2018 tax year. _____ title was listed as the CFO and Treasurer of _____. The form identified _____ as the PR and _____ as the DI for the PR. The form purported to extend the section 6235(a)(1) period of limitations to make partnership adjustments until September 13, 2023.

On November 3, 2022, _____ signed a second Form 872-M for the 2018 and 2019 tax years. The form identified _____ as the PR and _____ as the DI for the PR. The form purported to extend the section 6235(a)(1) period of limitations to make partnership adjustments until September 15, 2024.

On April 19, 2024, _____ signed a third Form 872-M for the 2018 and 2019 tax years. _____ title was listed as the CFO and Treasurer of _____. The form identified _____ as the PR and _____ as the DI. The form purported to extend the section 6235(a)(1) period of limitations to make partnership adjustments until December 31, 2024.

On August 6, 2024, _____ signed a fourth Form 872-M for the 2018 and 2019 tax years. The form identified _____ as the PR and _____ as the DI. The form purported to extend the section 6235(a)(1) period of limitations to make partnership adjustments until April 30, 2026.

LAW AND ANALYSIS

The BBA audit rules apply to all partnership returns filed on Form 1065, unless the partnership makes a valid election out of BBA under section 6221(b). A valid election must be made on a timely filed Form 1065. Section 6221(b)(1)(D)(i). _____ did not opt to elect out of the BBA audit rules on its 2018 or 2019 Forms 1065. Therefore, the BBA audit rules apply to the 2018 and 2019 taxable years.

A. The Partnership Representative

Under BBA, the PR has the sole authority to act on behalf of the partnership. Section 6223(a). A partnership must designate a PR for each tax year that is subject to the BBA audit rules. Treas. Reg. § 301.6223-1(a). A PR may be designated on the Form 1065 or Form 8979. Treas. Reg. § 301.6223-1(c)(2). When a partnership designates an entity as its PR, the partnership must also name a DI for the PR. Treas. Reg. § 301.6223-1(b).

There may be only one PR and one DI for a partnership taxable year at any time. Treas. Reg. § 301.6223-1(a). The designation of a PR for a partnership taxable year remains in effect until the PR resigns, the partnership revokes the designation, or the Service determines that the designation no longer has effect. *Id.* Form 8979 is used to designate or revoke a PR or DI, for the PR or DI to resign, or for the Service to designate a PR/DI where no PR/DI is in effect. For BBA partnerships, the PR, or DI if the PR is an entity, has the sole authority to sign a Form 872-M.

designated as its PR for the 2018 tax year. However, the taxpayer identification number listed for belongs to . was named as the DI for . For the 2019 tax year, designated as the entity PR and named as the DI to act on behalf of the entity PR.

1. Forms 872-M for 2018 and 2019

The initial Form 872-M purported to extend the period of limitations until September 13, 2023, for the 2018 tax year. This Form 872-M was invalid because it was signed by . The PR/DI, had the sole authority to sign the extension. never submitted a Form 8979 to change the PR/DI for the 2018 tax year to ; therefore, had no authority to sign the Form 872-M form to extend the period of limitations until September 13, 2023.

The second Form 872-M purported to extend the period of limitations until September 15, 2024, for the 2018 and 2019 tax years. This Form 872-M was invalid because it was signed by . had the sole authority to sign for 2018 and had the sole authority to sign on behalf of for 2019. never submitted a Form 8979 to change the PR/DI for the 2018 or 2019 tax years to ; therefore, had no authority to sign the Form 872-M form to extend the period of limitations until September 15, 2024.

The third Form 872-M purported to extend the period of limitations until December 31, 2024, for the 2018 and 2019 tax years. This Form 872-M was invalid because it was signed by . had the sole authority to sign for 2018 and had the sole authority to sign on behalf of for 2019. never submitted a Form 8979 to change the PR/DI for the 2018 or 2019 tax years to

; therefore, had no authority to sign the Form 872-M form to extend the period of limitations until December 31, 2024.

The fourth Form 872-M purported to extend the period of limitations until April 30, 2026, for the 2018 and 2019 tax years. This Form 872-M was invalid because it was signed by . had the sole authority to sign for 2018 and had the sole authority to sign on behalf of for 2019.

never submitted a Form 8979 to change the PR/DI for the 2018 or 2019 tax years to ; therefore, had no authority to sign the Form 872-M form to extend the period of limitations until April 30, 2026.

B. Period of Limitations

Under section 6235(a), the Service generally has three years from the date a return is filed or its original due date, whichever comes later, to make a proposed adjustment to a partnership return. The section 6235(a) date can be extended by agreement pursuant to section 6235(b).

1. 2018 Tax Year

The 2018 Form 1065 was filed on September 13, 2019. The original due date was March 15, 2019. The filing date is the later of the two dates; therefore, we add three years to that date to arrive at the section 6235(a)(1) date, which was September 13, 2022. This is date by which the Letter 5892, *Notice of Proposed Partnership Adjustment* (NOPPA), was required to be mailed by. Section 6231(b)(1). The NOPPA has not been mailed due to the reliance on the Forms 872-M that were signed by and , which purportedly extended the section 6235(a)(1) period of limitations through April 30, 2026.

2. 2019 Tax Year

The 2019 Form 1065 was filed on September 14, 2020. The original due date was March 15, 2020. The filing date is the later of the two dates; therefore, we add three years to that date to arrive at the section 6235(a)(1) date, which was September 14, 2023. This is date by which the Letter 5892, *Notice of Proposed Partnership Adjustment* (NOPPA), was required to be mailed by. Section 6231(b)(1). The NOPPA has not been mailed due to the reliance on the Forms 872-M that were signed by and , which purportedly extended the section 6235(a)(1) period of limitations through April 30, 2026.

CONCLUSION

All of the Forms 872-M were invalid because they were signed by individuals that were not the designated PR/DI. Therefore, the period of limitations for the 2018 tax year

expired on September 13, 2022, and the period of limitations for the 2019 tax year expired on September 14, 2023.

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

If you have any questions, please contact _____ at _____.

Signing Partnership Returns Chief Counsel Memorandum CCA 202505027

Chief Counsel Advice Memorandum CCA 202505027 addresses the critical issue of who is authorized to sign consents to extend the time to make partnership adjustments under the Bipartisan Budget Act of 2015 (BBA) audit regime. The memorandum specifically considers whether such consents (Forms 872-M) are valid if signed by someone other than the designated individual (DI) of the entity partnership representative (PR) named on the partnership's tax returns for the years in question.

Key Legal Details and Reasoning

1. Authority of the Partnership Representative (PR) and Designated Individual (DI)

- **Section 6223(a)** of the Internal Revenue Code provides that the PR has the sole authority to act on behalf of the partnership for all purposes under the centralized partnership audit regime.
- **Treas. Reg. §301.6223-1(a)** requires that a partnership designate a PR for each tax year subject to the BBA rules.
- If the PR is an entity, **Treas. Reg. §301.6223-1(b)** requires the partnership to also designate a DI, who is the individual through whom the entity PR acts.
- Only the PR (or the DI, if the PR is an entity) has the authority to sign documents such as Form 872-M to extend the statute of limitations for partnership adjustments [1].

2. Validity of Extensions Signed by Unauthorized Individuals

- In the case discussed in CCA 202505027, the partnership's Forms 1065 for 2018 and 2019 identified specific PRs and DIs. However, the Forms 872-M extending the period for partnership adjustments were signed by individuals who were not the designated PR or DI for those years.
- The IRS concluded that these extensions were invalid because they were not signed by the proper PR/DI. The authority to act on behalf of the partnership is exclusive to the PR/DI, and this authority cannot be delegated or assumed by another individual unless a formal change is made using Form 8979 [1].

3. Consequences of Invalid Extensions

- Because the Forms 872-M were not validly executed, the statute of limitations for making partnership adjustments was not extended.

- For the 2018 tax year, the period expired three years after the later of the return's filing date or its original due date (here, September 13, 2022).
- For the 2019 tax year, the period expired on September 14, 2023.
- Any Notice of Proposed Partnership Adjustment (NOPPA) issued after these dates would be untimely, and the IRS would be barred from making adjustments for those years [1].

4. No Retroactive Cure Without Proper Designation

- The memorandum emphasizes that unless a new PR/DI is designated using Form 8979, an individual who is not the designated PR/DI cannot validly sign consents or other documents on behalf of the partnership for the relevant tax year [1].

5. Broader Implications

- The authority of the PR/DI is not subject to limitation by state law, partnership agreement, or other documents; it is determined solely by federal law under the BBA regime [2].
- The failure to obtain the correct signature can have significant consequences, including the inability of the IRS to adjust partnership items if the statute of limitations expires, or, conversely, the failure to start the statute of limitations if a return is not properly signed by an authorized person.

Summary

CCA 202505027 makes clear that under the BBA audit rules, only the designated PR (or DI, if the PR is an entity) for a given tax year has the authority to sign consents to extend the period for partnership adjustments. Any extension signed by another individual is invalid, and the statute of limitations will not be extended. This strict requirement underscores the importance of ensuring that all partnership filings and consents are executed by the correct, duly designated individuals as required by the Code and regulations [1] [2].

Cited sources:

[1] CCA 202505027: <https://app.askbluej.com/source/7e9c4342-3eea-5be0-84a4-df853e1a675e>

[2] <https://www.thetaxadviser.com/issues/2025/aug/signing-partnerships-returns-and-other-tax-documents/>