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INTERNAL REVENUE SERVICE NATIONAL OFFICE FIELD SERVICE ADVICE

MEMORANDUM FOR ASSOCIATE AREA COUNSEL
CC:SB:7:SEA:1

FROM: Associate Chief Counsel (Passthroughs & Special Industries)
CC:PSI

SUBJECT: Validity of Tax Returns

This Field Service Advice responds to your memorandum dated June 26, 2000. 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.

DISCLOSURE STATEMENT

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LEGEND:

Partnerships	=
Partnership Business	=
Investor Partnerships	=
Sales Partnership	=
Management Partnership	=
Operational Partnership	=
X	=
Y	=
Z	=
Date 1	=
Date 2	=
Date 3	=
Year 1	=
Year 2	=
Year 3	=

ISSUE:

Whether Forms 1065, U.S. Partnership Return of Income, filed constitute valid returns.

CONCLUSION:

The Forms 1065 filed do not constitute valid returns.

FACTS

Operational Partnership filed a Chapter 11 petition, and a plan of reorganization has been confirmed. On Date 1, involuntary Chapter 7 bankruptcy petitions were filed against Sales Partnership and Management Partnership. These partnerships are part of a group of related partnerships which are part of a series of partnerships involving Partnership Business. The shelter includes Investor Partnerships, which purchased Partnership Business from Sales Partnership and were operated in a manner that increased and/or accelerated the deductions of the investors/limited partners similar to traditional tax shelters. The Investor Partnerships also pay management fees to Management Partnership. Lastly, money flowed to Operational Partnership, which operated the facilities for the Partnership Business. There are over X investors in a total of Y Investor Partnerships. Sales Partnership, Management Partnership, and Operational Partnership are essentially comprised of the founders and promoters of the tax shelter.

A United States Trustee was appointed to monitor the Sales Partnership and Management Partnership cases. The trustee initiated a declaratory judgment action in the Bankruptcy Court requesting that the court collapse all Partnerships (including the Investor Partnerships that were not before the court) into a single entity. The basis for collapsing such entities was that all of the entities have shared common accounts and books and records. From a bookkeeping standpoint, the Partnerships have made no meaningful distinctions amongst themselves, and from a practical standpoint, have operated as a single enterprise.

On Date 2, the Bankruptcy Court ordered substantive consolidation of all Partnerships as of Date 1, the date the involuntary bankruptcy petitions were filed. On September 24, 1999, we issued Field Service Advice in which we concluded that the substantive consolidation did not result in a merger or consolidation of the Partnerships for tax purposes.

Nearly all of the Partnerships are subject to the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. No. 97-248 (TEFRA), procedures and were either currently under examination or docketed before the Tax Court. The Partnership years under examination included Years 1, 2, and 3. In general, the Partnership cases can be organized into three categories: under examination; docketed but not yet tried; and decided.

For Year 1, the Investor Partnerships filed blank Forms 1065 and attached balance sheets. Also in Year 1, approximately Z partners claimed partnership losses on their individual tax returns. For each of Years 2 and 3, the bankruptcy trustee filed a Form 1065 for the entity created by the Bankruptcy Court under order of substantive consolidation. These Forms 1065 were also blank, except for the name and address of the entity and the inclusion of a statement indicating that the trustee lacked the information from which a return could be prepared. At this time, it appears that none of the partners have claimed losses for Years 2 or 3.

LAW AND ANALYSIS

In the Circuit Court of Appeals for the Ninth Circuit, a blank return does not constitute a return. In United States v. Long, 618 F.2d 74 (9th Cir. 1980), the Ninth Circuit held that returns containing zeros constituted valid returns. In so holding, however, the court contrasted a zero return with a return that omits all information.

In United States v. Porth, 426 F.2d 519, 523 (10th Cir.), cert. denied, 400 U.S. 824, 91 S. Ct. 47, 27 L. Ed. 2d 53 (1970), the Tenth Circuit held that a tax form that "does not contain any information relating to the taxpayer's income from which the tax can be computed" is not a

valid return under § 7203. This circuit adopted the Porth standard in United States v. Klee, 494 F.2d 394, 397 (9th Cir.), cert. denied, 419 U.S. 835, 95 S. Ct. 62, 42 L. Ed. 2d 61 (1974).

The zeros entered on Long's tax forms constitute "information relating to the taxpayer's income from which the tax can be computed." The I.R.S. could calculate assessments from Long's strings of zeros, just as it could if Long had entered other numbers. The resulting assessments might not reflect Long's actual tax liability, but some computation was possible. In this respect, the circumstances here differ from those in Porth and similar cases in which defendants failed to complete tax forms or left them blank. Nothing can be calculated from a blank, but a zero, like other figures, has significance. A return containing false or misleading figures is still a return. False figures convey false information, but they convey information.

Long, 618 F.2d at 75-76 (footnotes omitted).

For Year 1, the Investor Partnerships filed blank Forms 1065 and attached balance sheets. For each of Years 2 and 3, the bankruptcy trustee filed a Form 1065 for the entity created by the Bankruptcy Court under order of substantive consolidation. These Forms 1065 were also blank, except for the name and address of the entity and the inclusion of a statement that the trustee lacked the information from which a return could be prepared. Because the Forms 1065 in the present matter contain no information from which a computation would be possible, the forms are not valid returns.

The underlying basis for your inquiry is to determine the proper method by which to adjust the tax liability of the Z partners that claimed losses in Year 1. 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." H.R. Conf. Rep. No. 97-248 (1982). Accordingly, the Service may examine the partnership as an entity, rather than conduct a separate examination as to each of the partners.

In the case of adjustments resulting from the adjustment of partnership items, section 6229 extends the partners' general period of assessment. Rhone-Poulenc Surfactants & Specialties v. Commissioner, 114 T.C. No. 34 (2000). If no

partnership return is filed, section 6229(c)(3) allows the assessment of partnership or affected items at any time.

Until a valid partnership return has been filed, the partners' general period for assessing adjustments from the Investor Partnerships will not expire. Under the facts presented, we have concluded that no valid return has been filed. Consequently, there is no limitations period within which an assessment must be made. Therefore, there is no immediate need to issue a notice of final partnership administrative adjustment. Thus, we do not reach the issue of the entity to which such a notice should be directed.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS:

On Date 3, a settlement proposal was sent to the partners of the Investor Partnerships. At this time, we are awaiting responses to this proposal from such partners. [REDACTED]

Please call if you have any further questions.

By: _____
PATRICK PUTZI
Special Counsel (Natural Resources)
Branch 9
Associate Chief Counsel
(Passthroughs & Special Industries)