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From:

Sent: Monday, March 16, 2009 3:03:15 PM

To:

Cc:

Subject: RE: TY2007 Fiscal Year Partnership returns

Hi

Section 6011(e) of the Internal Revenue Code provides that the IRS must require partnerships with more than 100 partners to file returns electronically. This requirement applies to Form 1065 partnership returns that must be sent to the IRS.

Regulations implement this electronic filing requirement. Treasury Regulations section 301.6011-3(a) provides that if a partnership with more than 100 partners is required to file a partnership return, the information required by the applicable forms and schedules must be filed electronically, unless a waiver from the electronic filing requirement has been granted. Returns filed electronically must be made in accordance with applicable revenue procedures or publications.

Current Publications 1463 and 1464 do not list fiscal year partnerships as an exclusion from the electronic filing requirement, and thus must be filed electronically if the partnership has more than 100 partners.

Announcement 2002-3 only excludes fiscal year filers *for Tax Year 2001* and admonishes taxpayers to look at IRS publications for the list of e-file exclusions.

Announcement 2002-3 provides:

Beginning with taxable years ending on or after December 31, 2000, the Service will require partnerships with more than 100 partners to file their partnership returns electronically. IRS Publication 1524 contains instructions for filing partnership returns electronically, and excludes certain partnerships from the electronic filing requirement. For Tax Year 2001, the IRS has excluded Partnerships with the following type of returns from the electronic filing requirement:

- 1) Fiscal Year Filers
- 2) Foreign Address Partnerships
- 3) Amended Returns
- 4) Delinquent Returns

(Note: For a detailed list of the exclusions, refer to Publication 1524.)

Publication 1524 was superseded by Publication 4163 and 4164. So in my view, it is clear that fiscal year partnerships with over 100 partners are required to e-file, unless a waiver is granted. A careful reading of Announcement 2002-3 does not support the conclusion that in 2008, there is no e-file requirement for fiscal year partnership filers with over 100 partners.

Contact me if I can be of further assistance.