

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:2-PLR-139805-01

Date:

February 15, 2002

Legend

Partnership =

Dear _____ :

This responds to a letter dated July 24, 2001, and additional correspondence, submitted on behalf of Partnership requesting a ruling under § 775 of the Internal Revenue Code.

Facts

Partnership has represented the following facts. Partnership had over 100 direct partners for its taxable year beginning January 1, 1997. Partnership was eligible and intended to choose electing large partnership status under § 775 for its taxable year beginning on January 1, 1998. However, Partnership filed Form 1065, U.S. Return of Partnership Income, rather than Form 1065-B, U.S. Return of Income for Electing Large Partnerships, for the taxable years beginning on January 1, 1998, and January 1, 1999.

Partnership attempted to make the § 775 election by attaching a statement to its 1998 return. Partnership represents that although it used the wrong forms, the information on its income tax returns for 1998 and 1999 was consistent with having made an election under § 775. Partnership seeks a ruling that Partnership substantially complied with the election requirements to choose electing large partnership status under § 775 of the Internal Revenue Code.

Discussion

A regular partnership is required to separately report to each partner the partner's distributive share of any item of income, gain, loss, deduction, or credit that if separately taken into account by any partner would result in an income tax liability for that partner different from that which would result if the item was not taken into account separately. See § 702. Unlike a regular partnership, an electing large partnership combines most items at the partnership level and passes through net amounts to partners. See §§ 771-777.

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Section 775(a)(1) provides that the term “electing large partnership” means, with respect to any partnership taxable year, any partnership if—(A) the number of persons who were partners in such partnership in the preceding partnership taxable year equaled or exceeded 100, and (B) such partnership elects the application of this part. To the extent provided in regulations, a partnership shall cease to be treated as an electing large partnership for any partnership taxable year if in such taxable year fewer than 100 persons were partners in such partnership. Section 775(a)(2) provides that the election under § 775(a) shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary. The instructions for Form 1065-B, U.S. Return of Income for Electing Large Partnerships, provide that an eligible partnership chooses electing large partnership status by filing Form 1065-B instead of Form 1065. In this case, Partnership did not literally comply with the instructions for Form 1065-B.

Elections may be held to be effective where the taxpayer complied with the essential requirements of a regulation even though the taxpayer failed to comply with certain procedural directions therein. See *Hewlett-Packard Company v. Commissioner*, 67 T.C. 736, 748 (1977), *acq. in result*, 1979-1 C.B. 1. The election will be deemed valid if there are enough facts and circumstances to indicate that Partnership intended to choose electing large partnership status for the 1998 taxable year.

Conclusion

Based on the information submitted and the representations made, we conclude that there was sufficient information provided with Partnership’s federal income tax return to conclude that Partnership substantially complied with the requirements for choosing electing large partnership status under § 775 for the 1998 taxable year. Therefore, Partnership is deemed to have chosen electing large partnership status for the 1998 taxable year and thereafter. However, this letter is conditioned on Partnership filing Forms 1065-B, U.S. Return of Income for Electing Large Partnerships, for the 1998 and 1999 taxable years with the appropriate service center within 60 days from the date of this letter. A copy of this letter should be attached to each return.

The rulings contained in this letter are based upon information and representations submitted by Partnership and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, no opinion is expressed concerning whether Partnership meets the requirements of § 775.

This ruling is directed only to the taxpayers who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

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Pursuant to a power of attorney on file with this office, copies of this letter are being sent to Taxpayers' authorized representatives.

Sincerely yours,
Matthew Lay
Senior Technician Reviewer
Branch 2
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures: 2
Copy of this letter
Copy for § 6110 purposes