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[Third Party Communication:

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Release Date: 8/21/2015

From: [REDACTED]

Sent: Tuesday, July 14, 2015 3:24:26 PM

To: [REDACTED]

Cc: [REDACTED]

Bcc:

Subject: RE: [REDACTED] ; POSTF-116850-15

This email responds to your request for advice dated 6/9/2015. In response to your questions:

1. [REDACTED] is not eligible to be the TMP of [REDACTED] because [REDACTED] is not a member-manager as defined in Treas. Reg. § 301.6231(a)(7)-2.
2. [REDACTED] is not eligible to be [REDACTED] TMP because [REDACTED] is not a member-manager as defined in Treas. Reg. § 301.6231(a)(7)-2.
3. A Form 872-P signed by [REDACTED] would not extend the period to assess the other partners of [REDACTED] unless [REDACTED] had authority to sign for the TMP or was given authority to sign a statute extension in a statement signed by the member-manager of [REDACTED]. [REDACTED] does not appear to have been granted that authority.
4. The IRS may assess [REDACTED] for the tax attributable to the adjustment of the partnership items of [REDACTED] because the period to assess [REDACTED] is open due to individual statute of limitations extensions signed by [REDACTED].

Under Treas. Reg. § 301.6231(a)(7)-1(b)(1)(i), only a person who was a general partner during some of the taxable year may be the TMP of a TEFRA partnership. For LLCs, only a member-manager of an LLC is treated as a general partner. Treas. Reg. 301.6231(a)(7)-2. A member-manager is someone who, alone or together with others, has the authority to make management decisions necessary to conduct the business of the LLC. Treas. Reg. § 301.6231(a)(7)-2(b)(3). If there are no elected or designated member-managers, each member is treated as a member-manager.

According to the LLC agreement, [REDACTED] is a CA LLC. Under CA law, if the articles of organization of an LLC indicate that the LLC is a manager-managed LLC, then no member acting solely in the capacity as a member is an agent of the LLC for purposes of its business or affairs and may not bind the LLC. Cal. Corp. Code § 17703.01. If the articles of organization do not indicate that the LLC is a manager-managed LLC, then every member is an agent of the LLC. Id. Therefore, under CA law all members are managers, but only if the LLC agreement does not provide otherwise.

In its articles of organization, _____ checked the box to indicate that it is to be managed by one manager. On _____ of the LLC agreement, management of _____ is vested in _____. Therefore, _____ is a manager-managed LLC under CA law and only managers have, under CA law, the authority to make management decisions necessary to conduct the business of the LLC. Under Treas. Reg. § 301.6231(a)(7)-2(b)(3) in order for a person to be a “member-manager” and, thus, qualified to be the TMP of an LLC, the person must be 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.” In this case, _____ has vested management of itself in _____, who is also a member of _____. As _____ is a member of _____, and the only manager, he is the only “member-manager” under Treas. Reg. § 301.6231(a)(7)-2 and, thus, is the only person qualified to be the TMP of _____.

Because _____ is the only person qualified to be the TMP of _____, _____ and _____ are not eligible to be the TMP of _____. Thus, a statute extension signed by _____ would not extend the period to assess other partners of _____ unless _____ was acting for the TMP or a person authorized by the partnership in writing to extend the period for the other partners. I.R.C. § 6229(b)(1)(B). We have no indication that this is the case. However, you have indicated that _____ has signed Forms 872 to extend his personal period for assessment. Therefore, _____’s period of limitations for assessment is open and the IRS may assess tax attributable to any adjustments to _____’s partnership items. See I.R.C. § 6229(b)(1)(A), (3).

Please let me know if you have any questions, or if we can be of further assistance.

Thanks,