[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9839]

RIN 1545-BN41

Partnership Representative under the Centralized Partnership Audit Regime and Election to Apply the Centralized Partnership Audit Regime

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulation and removal of temporary regulations.

SUMMARY: This document contains final regulations regarding the designation and authority of the partnership representative under the centralized partnership audit regime, which was enacted into law on November 2, 2015 by section 1101 of the Bipartisan Budget Act of 2015 (BBA). These final regulations affect partnerships for taxable years beginning after December 31, 2017. This document also contains final regulations and removes temporary regulations regarding the election to apply the centralized partnership audit regime to partnership taxable years beginning after November 2, 2015 and before January 1, 2018 under section 1101(g)(4) of the BBA. These final regulations affect partnerships for taxable years beginning after November 2, 2015 and before January 1, 2018.

DATES: Effective date: These regulations are effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Applicability Date: For dates of applicability, see §§301.6223-1(h), 301.6223-2(f), and 301.9100-22(e).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations under §§301.6223-1 and 301.6223-2, Joy E. Gerdy Zogby of the Office of Associate Chief Counsel (Procedure and Administration), (202) 317-4927; concerning §301.9100-22, Jennifer M. Black of the Office of Associate Chief Counsel (Procedure and Administration), (202) 317-6834 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations to amend the Procedure and Administration Regulations (26 CFR Part 301) under Subpart – Tax Treatment of Partnership Items to implement the rules for the partnership representative under the centralized partnership audit regime enacted by section 1101 of the BBA, Public Law 114-74. Section 1101 of the BBA was amended on December 18, 2015, by the Protecting Americans from Tax Hikes Act of 2015, Public Law 114-113, and on March 23, 2018 by the Tax Technical Corrections Act of 2018, which was enacted into law as part of the Consolidated Appropriations Act of 2018, Public Law 115-141. Section 301.6223-1 provides the rules regarding the designation of the partnership representative, §301.6223-2 provides the rules regarding the authority of the partnership representative, and §301.9100-22 provides the rules for making the election under section 1101(g)(4) of the BBA with respect to returns filed for partnership taxable years beginning after November 2, 2015 and before January 1, 2018.

On August 5, 2016, the Treasury Department and the IRS published in the **Federal Register** (81 FR 51795) temporary regulations (TD 9780) regarding the time, form, and manner for making an election to apply the centralized partnership audit regime to partnership taxable years beginning after November 2, 2015 and before January 1, 2018. On the same day, the Treasury Department and the IRS published in the **Federal Register** (81 FR 51835) a notice of proposed rulemaking (REG-105005-16) cross-referencing the temporary regulations. No comments were received in response to the proposed regulations, and no hearing was requested or held.

On June 14, 2017, the Treasury Department and the IRS published in the **Federal Register** (82 FR 27334) a notice of proposed rulemaking (REG-136118-15) regarding a number of provisions of the centralized partnership audit regime, including section 6223, relating to the partnership representative (June 14 NPRM). A public hearing regarding the proposed regulations was held on September 18, 2017. The Treasury Department and the IRS also received written public comments in response to the proposed regulations, including comments regarding the partnership representative under section 6223.

On November 30, 2017, the Treasury Department and the IRS published in the **Federal Register** (82 FR 56765) a notice of proposed rulemaking (REG-119337-17) regarding international rules under the centralized partnership audit regime. On December 19, 2017, the Treasury Department and the IRS published in the **Federal Register** (82 FR 27071) a notice of proposed rulemaking (REG-120232-17) regarding certain procedural rules under the centralized partnership audit regime, including proposed §301.6231-1 regarding notices that are required to be mailed to partnerships

(December 19 NPRM). On January 2, 2018, the Treasury Department and the IRS published in the **Federal Register** (82 FR 28398) final regulations for electing out of the partnership audit regime. On February 2, 2018, the Treasury Department and the IRS published in the **Federal Register** (83 FR 4868) a notice of proposed rulemaking (REG-118067-17) regarding rules for adjusting tax attributes under the centralized partnership audit regime.

After careful consideration of all written public comments and statements made during the public hearing relating to section 6223, the portions of the June 14 NPRM relating to section 6223 are adopted as amended by this Treasury Decision. These amendments are discussed in the next section. Examples were revised to conform to the amendments discussed in the next section, and clarifying and editorial revisions were also made. The Treasury Department and the IRS received no comments with respect to proposed §301.9100-22 and made no substantive revisions to the proposed regulations. Accordingly, the final regulations adopt the proposed regulations without any substantive change. Minor editorial changes were made. The temporary regulations are removed.

Summary of Comments and Explanation of Revisions

1. Partnership Representative

In response to the June 14 NPRM, the Treasury Department and the IRS received 33 written comments, and five statements were provided at the public hearing. All comments (both written and provided orally at the public hearing) were considered, and written comments are available for public inspection at www.regulations.gov or upon request. This preamble addresses only the comments or portions of comments

relating to the proposed regulations under section 6223, which are the proposed regulations from the June 14 NPRM being finalized in this Treasury Decision. Comments, or any portion of a comment, that relate to other aspects of the proposed regulations in the June 14 NPRM that have not yet been finalized will be addressed when final regulations regarding those provisions are published. The comments relating to the proposed regulations under section 6223 cover a broad range of topics, including eligibility to serve as the partnership representative, designating and changing a partnership representative, and the binding effect and authority of the partnership representative. These comments were considered and revisions to the regulations were made in response to the comments.

A. Eligibility to Serve as the Partnership Representative

Proposed §301.6223-1(b)(1) provided that a partnership may designate any person that has a substantial presence in the United States and that has the capacity to act to be the partnership representative. If an entity is designated as the partnership representative, the partnership must appoint a designated individual to act on the entity's behalf. See proposed §301.6223-1(b)(2), (3), and (4).

One comment recommended that §301.6223-1(b)(1) explicitly provide that a disregarded entity can serve as the partnership representative. This comment has been adopted. Any person as defined in section 7701(a)(1), including an entity, can serve as the partnership representative provided that person meets the requirements of §301.6223-1(b). Therefore, §301.6223-1(b)(1) has been revised to clarify that a disregarded entity can be a partnership representative. Because a disregarded entity is not an individual and is an entity partnership representative, the partnership must

appoint a designated individual to act on behalf of the disregarded entity in accordance with §301.6223-1(b)(3). In addition, both the disregarded entity and the designated individual must have substantial presence as described in §301.6223-1(b)(2).

Section 301.6223-1(b)(1) has also been revised to clarify that a partnership may designate itself as its own partnership representative. The rules regarding eligibility to serve as a partnership representative are designed to permit the partnership to designate the person it believes is most appropriate to serve as partnership representative, provided that person meets the requirements of §301.6223-1(b)(2) (substantial presence) and §301.6223-1(b)(3) (designated individual). Therefore, a partnership may serve as its own partnership representative if the partnership has substantial presence in the United States and also appoints a designated individual that has a substantial presence in the United States to act on the partnership's behalf in the partnership's role as partnership representative.

One comment recommended that the regulations confirm that, in the case of an entity designated as partnership representative, the designated individual does not have to be an employee of that entity. Nothing in the regulations requires that the designated individual be an employee of the entity partnership representative. As explained in part 4.F. of the preamble to the June 14 NPRM, an entity with no employees is permitted to be the partnership representative provided the partnership appoints a designated individual to act on behalf of that entity and both the entity and the designated individual have substantial presence in the United States. Because the plain language of the regulation does not require the designated individual to be an employee of the entity

partnership representative, no clarification is necessary and the comment was not adopted.

Another comment suggested that a partnership should not be required to appoint a designated individual to act for an entity partnership representative until the IRS issues a notice of administrative proceeding (NAP) or the partnership files a valid administrative adjustment request (AAR) under section 6227. This comment was not adopted. The purpose of the designated individual requirement is to have an individual identified who can act on behalf of the entity partnership representative prior to the beginning of an administrative proceeding under subchapter C of chapter 63 (administrative proceeding). If no designated individual is appointed and the IRS initiates an administrative proceeding, neither the partnership nor the IRS will know who has the authority to act on behalf of the entity partnership representative. This could delay the beginning of the proceeding and consequently slow down the administrative proceeding.

As explained in part 2.D. of the preamble to the June 14 NPRM, these types of delays frequently occurred under TEFRA. Under TEFRA, partnerships and the IRS often spent a significant amount of time establishing that a person designated as the tax matters partner (TMP) was qualified to be the TMP or, in the case of an entity TMP, identifying and locating an individual to act on the entity's behalf. Also as explained in part 2.D. of the preamble to the June 14 NPRM, the introduction of the partnership representative concept under the centralized partnership audit regime was intended to address the shortcomings of the TMP rules. Accordingly, the proposed regulations required the partnership to identify and appoint a designated individual prior to the start

of an administrative proceeding to avoid a delay related to locating and confirming the identity of an individual to act on behalf of an entity partnership representative. With that objective in mind, the final regulations maintain the rule that in the case of an entity partnership representative, the partnership must appoint a designated individual at the time the partnership representative is designated.

Another comment suggested that the entity partnership representative itself, rather than the partnership, should appoint the designated individual. The partnership makes the initial designation of the partnership representative on the partnership's return. When an entity is chosen, the partnership must appoint a designated individual to act on behalf of the entity partnership representative. See §301.6223-1(c)(2). While this rule requires that the partnership appoint the designated individual, nothing in the regulations precludes the entity partnership representative from identifying who the designated individual should be and communicating that decision to the partnership. Ultimately, however, the partnership must determine who will be the partnership representative. Determining who will be the designated individual to act on behalf of an entity partnership representative is part of that determination. Therefore, the final regulations retain the rule that the partnership must appoint the designated individual on its partnership return for the relevant taxable year.

This rule ensures that designation of the entity partnership representative and appointment of the designated individual occur simultaneously on the partnership return with the result that it will be clear to both the partnership and the IRS at the time the partnership return is filed who has the authority to act on behalf of the partnership for the taxable year for which the return is filed for purposes of the centralized partnership

audit regime. As discussed previously in this section of the preamble, under TEFRA, the IRS spent significant time and resources determining who was the TMP. If that TMP was an entity, the IRS and taxpayers spent additional time and resources determining who could act on behalf of the entity TMP under state law. Moreover, in cases where state law permitted an entity to act on behalf of an entity TMP, the IRS and the partnership had to identify an individual who could act on behalf of that entity to determine someone who could ultimately act on behalf of the entity TMP. The rule under §301.6223-1(c)(2) allows the IRS and the partnership to readily identify who can act on behalf of the partnership representative without having to inquire into who has the state law authority to act on behalf of the entity partnership representative. Because the partnership makes the designated individual appointment under the final regulations, the rule eliminates the time spent determining who can act for the partnership.

This rule is also necessary because under the centralized partnership audit regime an entity partnership representative can only act through a designated individual. To achieve this, the partnership must appoint the designated individual for the entity partnership representative to take action under the centralized partnership audit regime. Prior to the appointment of a designated individual, the entity partnership representative does not have the ability to act under the centralized partnership audit regime. Accordingly, the comment recommending the partnership representative make the designated individual appointment was not adopted, and §301.6223-1(b)(3)(ii) has been modified to clarify that the partnership must appoint the designated individual.

i. Substantial presence

Section 6223(a) provides that a partnership representative must have a substantial presence in the United States. Proposed §301.6223-1(b)(2) provided that a person has substantial presence in the United States for purposes of section 6223 if the person is able to meet in person with the IRS in the United States at a reasonable time and place, has a United States street address and telephone number where the person can be reached during normal business hours, and has a United States taxpayer identification number (TIN). Several comments suggested that the first two criteria for substantial presence were too vague and recommended clarification of what is considered reasonable with respect to the time and place for meetings between the partnership representative and the IRS and whether the reference to normal business hours is determined based on the IRS's business hours or based on the partnership's business hours.

Section 301.6223-1(b)(2) is designed to allow the partnership and the IRS maximum flexibility to determine mutually convenient times to meet, to schedule phone calls, and to share information, while at the same time ensuring that the partnership and its books and records are available to the IRS during the administrative proceeding. Because what constitutes a reasonable time and place depends on the facts and circumstances, providing specific rules by regulation applicable to every circumstance that could arise in an administrative proceeding is not feasible and, even if it were, doing so would interfere with rather than facilitate a productive environment for the administrative proceeding. There are existing regulations relating to the reasonable time and place for an examination in §301.7605-1 that are applicable to the centralized partnership audit regime. Section 301.7605-1(a) states: "The time and place of

examination . . . are to be fixed by an officer or employee of the Internal Revenue Service, and officers and employees are to endeavor to schedule a time and place that are reasonable under the circumstances." To address the comment, the regulations under §301.6223-1(b)(2) have been clarified to include a cross-reference to these provisions.

With respect to the comment regarding the meaning of "normal business hours," the Treasury Department and the IRS agree that this terminology is confusing. In addition, cross-referencing the rules for the time and place of examination under §301.7605-1 makes this term unnecessary. Therefore, the final regulations remove the reference in §301.6223-1(b)(2)(ii) to normal business hours. The partnership representative still must have a telephone number with a United States area code, but the reference to normal business hours has been removed to avoid confusion regarding what constitutes normal business hours.

The Treasury Department and the IRS also revised the phrase in §301.6223-1(b)(2)(i) - "The person is available to meet in person with the IRS" - to read - "The person makes themselves available to meet in person with the IRS." This change was made to distinguish between a partnership representative who is generally available to meet and works with the IRS to facilitate communications and a partnership representative who is generally available but refuses to meet with the IRS. Examples have also been added under §301.6223-1(b)(4) to illustrate this clarification.

Another comment recommended that regulations under proposed §301.6223-1(b)(2) establish a "safe harbor" for substantial presence that would allow the partnership to designate a location in the United States for purposes of communications

between the partnership representative and the IRS, similar to how businesses designate a registered agent and an address for accepting service of process. Section 301.6223-1(b)(2)(ii) requires the partnership to provide a United States street address and phone number where the partnership representative can be reached by United States mail and telephone. This rule already allows the partnership to designate a location within the United States for communications between the partnership representative and the IRS, including receipt of formal documents from the IRS. However, in addition to having a United States street address and telephone, a partnership representative must also make themselves available to meet in person with the IRS. As discussed in part 2.D of the preamble to the June 14 NPRM, the purpose of the substantial presence requirement is to "ensure that the person selected to represent the partnership will be available to the IRS in the United States when the IRS seeks to communicate or meet with the representative." Because the partnership representative must make themselves available to meet with the IRS, the partnership representative may have any telephone number with a United States area code and a street address in any location in the United States, provided the telephone number and street address allow the IRS to contact the partnership representative. Consequently, an explicit "safe harbor" for substantial presence is unnecessary, and the comment has not been adopted.

ii. Capacity to Act

One of the components of eligibility to serve as a partnership representative or designated individual under the proposed regulations was the capacity to act. Proposed §301.6223-1(b)(4) described five specific events that cause a person to lose the

capacity to act for purposes of section 6223 and included a catch-all provision for any unforeseen circumstances in which the IRS reasonably determined a person may no longer have the capacity to act. If a partnership representative lost the capacity to act under proposed §301.6223-1(b)(4), the IRS could determine that the designation of the partnership representative or appointment of a designated individual was not in effect. See proposed §301.6223-1(f). Additionally, where all general partners lost the capacity to act, a partner other than a general partner could sign a revocation of the partnership representative. See proposed §301.6223-1(e).

In response to the capacity-to-act requirements in the proposed regulations, one comment recommended that the list of circumstances under proposed §301.6223-1(b)(4) be expanded to include other specific situations such as when the person has been convicted of a felony or a crime that involves dishonesty or breach of trust, when the person is in bankruptcy or receivership, or when the person is known to be under criminal investigation for a violation of the Code. The same comment recommended that standards or limitations be included within the catch-all provision under proposed §301.6223-1(b)(4)(vi), which provides that a person loses the capacity to act in "any similar situation where the IRS reasonably determines the person may no longer have capacity to act." Another comment suggested that if a partnership becomes aware that the partnership representative lacks the capacity to act, the regulations should require the partnership to revoke that partnership representative's designation.

The capacity-to-act requirement was intended to correspond to situations where the person would not be able to represent the partnership during the administrative proceeding, for instance, when the person died, was legally incapacitated, or was

otherwise unable to act during the administrative proceeding. After reviewing the comments regarding capacity to act, the Treasury Department and the IRS reevaluated whether such a requirement is needed. Rather than creating a regulatory requirement for who should be the partnership representative or a designated individual, the Treasury Department and the IRS believe that partnerships are in the best position to make the decision as to who can best represent them before the IRS. For the reasons discussed below, the Treasury Department and the IRS have determined that regulations regarding capacity to act would provide an unnecessary limitation on the partnership's choice of who it believes is the best person to act on the partnership's behalf. Therefore, the comments have not been adopted, and the capacity-to-act requirement has been removed from the final regulations.

Under the proposed regulations, the partnership had complete control over who is designated as the partnership representative and appointed as a designated individual so long as the person designated or appointed satisfies the substantial presence requirement. Further, the partnership had the unilateral power to revoke the partnership representative for any reason. Therefore, the partnership can adequately protect itself if the concept of capacity is removed since it can revoke the partnership representative.

Beyond requiring a partnership representative to have a substantial presence in the United States, the Treasury Department and the IRS have determined that it is not the proper role of the IRS to make further inquiries into whether, in the view of the IRS, the designated partnership representative or designated individual is the right person to represent the partnership. For example, some partnerships may not wish to be

represented by a partnership representative that has filed for bankruptcy. But, in other cases, the partnership may determine that the partnership representative's bankruptcy status is not relevant to whether the person can serve as partnership representative.

By setting forth specific capacity factors, like bankruptcy, for making someone ineligible to act on behalf of the partnership, the regulations would be unnecessarily supplanting the partnership's judgment with that of the government. Accordingly, the final regulations remove the capacity-to-act requirement entirely because the partnership should have as much flexibility as possible in determining a partnership representative so long as the person meets the substantial presence requirements. Because this section has been removed, the cross-reference to that section in §301.6223-1(e) has also been removed. In addition, because this section has been removed, the comment suggesting that the IRS clarify that the partnership must require a revocation if it becomes aware that one of the capacity-to-act circumstances applies to its partnership representative is inapplicable and therefore is not adopted.

Although the capacity-to-act section has been removed from the final regulations, the IRS may still determine that a designation of the partnership representative is not in effect due to circumstances that would have resulted in a partnership representative not having capacity to act because at least some of the capacity-to-act requirements overlapped with substantial presence. For instance, the IRS may determine that a partnership representative designation is not in effect if the partnership representative is incarcerated because that partnership representative cannot make herself available to the IRS, which means the partnership representative does not satisfy the substantial

presence requirement. Having a separate capacity-to-act requirement was duplicated in these circumstances.

Two of the specified circumstances listed in proposed §301.6223-1(b)(4) involve determinations by a court that restrict a partnership representative's or designated individual's ability to serve. These circumstances would likely arise very rarely, and the IRS would likely not know these circumstances exist unless they were brought to the IRS's attention by a partner or the partnership itself. In the case of a court order stating that a person does not have capacity to manage his or her estate, the IRS may not know about this issue because the very nature of such a proceeding is sensitive and may not be made public. In the case of a court order in which an injunction was sought, the most likely parties to seek such an injunction would be partners or the partnership itself. The partnership, generally through its reviewed year partners, may revoke a partnership representative designation without the need for a court order, which would alleviate the need for a partnership or partner to pursue a court-ordered injunction. Even if such a court order existed, the IRS would need to review the court order to determine to what degree it inhibited a partnership representative from acting on behalf of the partnership. Because these circumstances would be rare, and because there would need to be actual knowledge of the court order as well as at least some interpretation of that court order, the Treasury Department and the IRS have removed these circumstances, which were previously listed in proposed §301.6223-1(b)(4), from the regulations.

B. Designating or Changing a Partnership Representative or a Designated Individual

Multiple comments recommended changes to the timing and mechanics for designating, appointing, and changing a partnership representative and designated individual. The comments included suggestions about the timing of when a change should occur, the effective date of such a change, notice requirements surrounding the change, and who can revoke a designation.

One comment suggested clarification regarding whether a partnership that has elected out of the centralized partnership audit regime under section 6221(b) must designate a partnership representative. A partnership that has elected out of the centralized partnership audit regime is not required to designate a partnership representative. The partnership representative is the person who has the sole authority to act on behalf of the partnership under the centralized partnership audit regime. If a partnership is not subject to the centralized partnership audit regime, a partnership representative has no authority with respect to the partnership. Nothing in the regulations requires a partnership that has elected out of the regime to designate a partnership representative. Therefore, the comment was not adopted.

i. Time for Changing the Partnership Representative

Under proposed §301.6223-1(d)(2) and (e)(2), a partnership representative designation can only be changed after the IRS mails a NAP or in conjunction with the filing of a valid AAR by the partnership under section 6227. Several comments suggested that proposed §301.6223-1(d)(2) and (e)(2) be revised to allow for changes to the partnership representative at any time after the original designation. One comment specifically recommended that the IRS adopt a system to monitor

designations of and changes to partnership representatives in the same way that the IRS monitors the last known address of taxpayers.

Allowing partnerships to change the partnership representative designation with the IRS at any time after the original designation is unnecessary and burdensome from a tax administration perspective and may increase burden for partnerships that are not selected for an administrative proceeding and have not filed an AAR. This is because the responsibilities and authority of a partnership representative are generally applicable only if a partnership is selected for examination as part of an administrative proceeding or the partnership files an AAR. In many cases, allowing partnerships to change the partnership designation before an administrative proceeding begins or before the partnership files an AAR means that the partnership would be filing a request to change a partnership representative that never takes, or plans to take, any action under the centralized partnership audit regime.

Further, preparing and filing a request to change a designation of a partnership representative requires partnerships to expend time and resources. Because the partnership representative designation may differ each year, tracking which partnership representatives were listed on which returns, and if a change were made, tracking those changes, can become complex. A partnership agreement requiring consultation with the partners (which may differ from year to year) when there is a change in the partnership representative adds further complexity.

For its part, the IRS would have to process requests to change a designation and associate that change with the correct partnership account even if the IRS never selects the partnership taxable year for an administrative proceeding and, therefore, never

interacts with the partnership representatives. Currently, the IRS does not have a system to process these changes outside of the administrative proceeding process or when an AAR is filed.

A comment recommended that the IRS develop a system to track changes in the designation of the partnership representative that is similar to the system used to monitor a taxpayer's last known address. Development of such a system would be very costly with little benefit to be gained because, as discussed above, the majority of changes would be for partnerships whose partnership representatives would never take any action on behalf of such partnerships.

Accordingly, the final regulations maintain the rule that a partnership representative may only be changed in the context of an administrative proceeding or in conjunction with the filing of a valid AAR. As the IRS gains experience with the centralized partnership audit regime, and methods are identified to alleviate the administrative and regulatory burden created by changes to a partnership representative designation before the commencement of an administrative proceeding, the rules may be revisited in future forms, instructions, or other guidance.

To address the aspect of the comments that reflect a desire to be able to change the partnership representative prior to the beginning of the administrative proceeding, §301.6223-1(e)(2) has been revised to allow the partnership to change the partnership representative through revocation when the partnership is notified that the partnership return is selected for examination as part of an administrative proceeding, in addition to when the NAP is mailed. In general, the IRS will issue the partnership, but not the partnership representative, a notice of selection for examination prior to mailing the NAP

to inform the partnership that it is being selected for examination. Under the proposed regulations, the partnership was not able to change the partnership representative until it received the NAP.

This rule will provide the partnership an opportunity to change its partnership representative before an administrative proceeding commences, allowing the partnership to be represented by the partnership representative of its choice throughout the administrative proceeding. Because the notice of selection for examination is only issued to the partnership, and not the partnership representative, this rule allows the partnership to make a change to the partnership representative without the involvement of the partnership representative (whom the partnership may be removing for cause). As a result of the revised rule, the NAP can be sent to the partnership's preferred partnership representative at the time the administrative proceeding begins. The rule also allows the partnership to change a designated individual prior to the beginning of the administrative proceeding.

Other comments suggested that the designation of the partnership representative should be required on an annual basis, that the currently designated partnership representative should have the sole authority to represent the partnership for all open years, and that partnerships should be required to designate one partnership representative for all years in the context of a multi-year administrative proceeding.

Under §301.6223-1(c), a partnership must designate the partnership representative on the partnership return for that partnership taxable year, that is, Form 1065, *U.S. Return of Partnership Income*. Identification of a partnership representative on an annual basis with the return provides certainty regarding who is the partnership

representative for a particular taxable year. The other systems suggested in the comments would be difficult to administer and could result in the IRS having to determine that no designation of a partnership representative is in effect because of this uncertainty.

Designation of a partnership representative on the return for that taxable year is also not an undue burden on the partnership. The identification, selection, and designation of the partnership representative is wholly within the discretion of the partnership (provided the person designated meets the requirements under §301.6223-1(b)). Nothing in the proposed regulations prevents a partnership from designating the same partnership representative on each partnership return it files or, once administrative proceedings with respect to more than one taxable year have commenced, designating one partnership representative (through the revocation procedures described in proposed §301.6223-1(e)) to act for the partnership for all years subject to the administrative proceeding.

Further, the partnership representative plays an important role in representing the interests of the partnership and, by extension, the partners for the taxable year subject to an administrative proceeding. The make-up of the partners in a partnership may change from tax year to tax year, and the economic arrangements within the partnership and between partners may also change. The partnership and its partners for each particular taxable year are in the best position to determine who the partnership representative should be if that particular taxable year is subject to an administrative proceeding. For these reasons, the comments have not been adopted.

ii. Resignation

Proposed §301.6223-1(d) provided the rules for resignations of partnership representatives and designated individuals. Proposed §301.6223-1(d)(1) provided that a resignation by a partnership representative "may" include a designation of a successor partnership representative. However, when the resignation was made with the filing of an AAR, proposed §301.6223-1(d)(2) provided that the partnership representative "must" designate a successor partnership representative. Proposed §301.6223-1(d)(3) provided that a resigning designated individual "may, but is not required to," designate a successor.

One comment noted the differences in the quoted language of these provisions and recommended that the final regulations be clarified to explain the consequences, if any, of those differences. The comment also questioned why the proposed regulations required designation of a successor partnership representative in the case of an AAR resignation, but not in the case of resignation that occurs during an administrative proceeding. The comment suggested that the rules should require designation of a successor for all resignations. In contrast, another comment recommended that a partnership representative never be permitted to designate a successor partnership representative and suggested that the partnership have a 30-day window after a resignation to designate a successor partnership representative.

After considering these comments, the final regulations remove the ability of a resigning partnership representative or designated individual to designate a successor. Under the proposed rule, a resigning partnership representative had the power to designate a partnership representative even though the partnership might not approve of the new partnership representative. For instance, this could occur in a situation

where the partnership representative is resigning due to an adverse relationship with the partnership. To avoid this result, the resignation of a partnership representative or designated individual should be the final action of that person for purposes of the centralized partnership audit regime.

For similar reasons, a resigning partnership representative should not be able to resign by filing an AAR. The partnership representative or designated individual may be revoked simultaneously with the filing of an AAR, though an AAR may not be filed solely for that purpose. See proposed §301.6227-1(a). However, it is unfair to the partnership to allow a resigning partnership representative to request adjustments to items of a partnership. Accordingly, the final regulations have been revised to prohibit a resignation at the time of the filing of an AAR.

Proposed §301.6223-1(d)(3) provided that a resignation of a designated individual is "subject to the time of resignation restrictions described in [proposed] §301.6223-1(d)(2)," that is, the timing rules that apply to a resignation of a partnership representative. One comment requested clarification of whether the ability of a designated individual to resign is subject to all of the restrictions in proposed §301.6223-1(d)(2) or whether the quoted language means some restrictions do not apply. As discussed above, the final regulations have been revised to remove the ability of a partnership representative to resign with the filing of an AAR; a partnership representative may resign only after a NAP has been issued by the IRS, or at such other time as prescribed by the IRS in other guidance. The final regulations have also been revised to provide that the rules governing when and how a partnership representative may resign also apply to designated individuals. Section 301.6223-1(d)

provides specific rules explaining how a designated individual resigns. Therefore, clarification is not necessary, and the comment was not adopted.

iii. Revocation

Proposed §301.6223-1(e)(3)(i) provided that a revocation must be signed by a person who was a general partner at the close of the taxable year for which the partnership representative designation is in effect as shown on the partnership return for that taxable year. One comment suggested that the language "as shown on the partnership return" be deleted to make clear that a partnership is not limited to revoking only the initial partnership representative designated on the partnership return.

The purpose of the quoted language was to describe how to determine whether a person was a general partner at the close of the taxable year, that is, by looking to the partnership return for that taxable year. It was not intended to describe what type of partnership representative designation can be revoked by the partnership. A partnership can revoke any designation of a partnership representative, including a designation made by the IRS, provided permission is granted by the IRS. See §301.6223-1(e)(6). Sections 301.6223-1(e)(1) and (e)(4) have been revised to clarify this point.

The comment also suggested that any partner of the partnership, instead of only a general partner, should be able to sign a revocation provided that partner certifies the partner has the authority to do so. This comment was adopted in the final regulations. The final regulations allow any partner who was a partner during the partnership taxable year to which the revocation relates, not just a general partner, to sign a revocation. Allowing any partner for the taxable year to which the revocation relates to sign the

revocation provides maximum flexibility to the partnership to determine which partners should have that authority.

The rules under proposed §301.6223-1(e)(3)(ii) made clear that for purposes of determining who may sign a revocation for a limited liability company (LLC), a member-manager is treated as a general partner and any other member is treated as a non-general partner. These rules were necessary to clarify in the context of LLCs which members can sign a revocation. As discussed above in this section of the preamble, however, the proposed regulations have been revised to permit any partner during the taxable year to which the revocation relates, not just a general partner, to sign a revocation. Therefore, §301.6223-1(e)(3)(ii) has been removed from the regulations because the rule equating member-managers with general partners is no longer necessary.

The comment also recommended that the "catch-all" provision under proposed §301.6223-1(b)(4)(vi) (regarding capacity to act) also apply in determining whether partners other than a general partner can sign a revocation. Proposed §301.6223-1(b)(4) has been removed from the final regulations and is no longer referenced in §301.6223-1(e); therefore, this comment was not adopted. The references to capacity to act were necessary when only certain partners could revoke the designation. Because the regulations have been revised to allow any partner for the partnership taxable year to which the revocation relates to sign the revocation, there is no need to describe situations in which general partners do not have the capacity to act and no need for the associated catch-all provision.

Lastly, the comment recommended that the regulations explicitly provide that a partnership can revoke a partnership representative designation for any reason. As discussed in section 2.C. of this preamble, nothing in the regulations requires the partnership to have a specific reason, or any reason at all, for a revocation. However, this comment was adopted to clarify that neither a revocation nor a resignation requires any particular reason. The final regulations also clarify that a revocation may occur regardless of when and how the designation was made, except with respect to a designation made by the IRS. See §301.6223-1(e)(6).

Proposed §301.6223-1(e)(3)(ii) applied the rules for signing a revocation to LLCs and provided that for purposes of the proposed regulations the term LLC means an organization that, among other things, “is classified as a partnership for Federal tax purposes.” A comment recommended that the phrase "is classified as a partnership for Federal tax purposes" be removed from the definition of LLC because the quoted language creates confusion about whether the LLC has to be currently classified as a partnership for the proposed rules regarding revocation to apply. As discussed in this section of the preamble, §301.6223-1(e)(3)(ii) has been removed from the regulations because the paragraph is no longer necessary in light of the changes to the revocation process.

While considering these comments, the Treasury Department and the IRS had the opportunity to reevaluate the portion of the rule in proposed §301.6223-1(e)(3) that required a person revoking a designation to be a partner at the close of the taxable year and determined that this rule is unnecessarily restrictive. This is because being a partner on the last day of the taxable year is not meaningful so long as the person is a

partner during the taxable year. For instance, a person who is a partner on the last day of the taxable year could be a partner with a small interest in the partnership or could have acquired their interest in the partnership on the next to last day of the partnership taxable year, whereas a person who is a partner during the year but not on the last day of the year could have owned a very large interest in the partnership or could have been a partner for all days during the year, except the last day.

Further, while the partnership return identifies partners during the taxable year, it is not readily apparent from the face of the return or the Schedules K-1 who was a partner on the last day of the partnership taxable year. Therefore, the IRS could not easily determine if the partner signing the revocation was a partner on the last day of the taxable year.

Finally, there may be more partner turnover during a partnership's taxable year as a result of fewer partnership short taxable years after the repeal of technical terminations under section under 708(b)(1). See section 13504 of "[a]n Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018," Public Law 115-97. Generally, under a technical termination under section 708(b)(1)(B), when 50 percent or more of a partnership's capital and profits are sold or exchanged during any 12 month period, the partnership taxable year ended, causing a short partnership taxable year. However, after repeal of the technical termination rule, there can be significant partner turnover during a partnership's full taxable year without resulting in an early close of the partnership taxable year. Thus, partners who dispose of their partnership interest, and who would have been partners for a full taxable year at the close of a short partnership taxable year when there was a

technical termination, are now partners for only part of a full 12 month partnership taxable year.

Accordingly, the final regulations have been revised to allow any person who was a partner at any time during the taxable year to which the revocation relates to sign the revocation. The final regulations were also revised to provide that the Treasury Department and the IRS may in the future provide forms, instructions, or other guidance that would allow the partnership to revoke the designation of a partnership representative if there are no reviewed year partners (as defined in proposed §301.6241-1(a)(9)) at the time of revocation.

One comment also suggested that a partnership should be able to revoke an appointment of a designated individual without first revoking the entity partnership representative designation. This comment was adopted in §301.6223-1(e). However, to ensure that the IRS has a contact point for the partnership, the regulations under §301.6223-1(e)(1) have also been revised to provide that if a partnership revokes the appointment of a designated individual and not the entity partnership representative, the partnership must appoint a successor designated individual at the same time of the revocation. Similar to the rules under the regulations with respect to the partnership representative resignation, failure to follow the rules of §301.6223-1(e), including failure to appoint a successor designated individual, results in an invalid revocation of the designated individual.

iv. Effective Date of a Resignation or Revocation

The proposed regulations provided that a resignation or revocation of the partnership representative (or designated individual, if applicable) is effective 30 days

from the date on which the IRS receives written notification of the resignation or the revocation. See proposed §301.6223-1(d)(1), (e)(1). One comment recommended that the IRS refrain from requiring time-sensitive actions or responses from the partnership during this 30-day period. Another comment recommended that a resignation or revocation of a partnership representative be immediately effective in certain situations, including when the partnership representative is the subject of a court order determining the partnership representative is incompetent or enjoining the partnership representative from serving as the partnership representative, the partnership representative is incarcerated, the partnership representative has become the subject of a criminal tax investigation, the partnership representative has been convicted of a felony or of a crime that involves dishonesty or breach of trust, or the partnership representative has become the subject of bankruptcy or receivership proceedings.

In response to these comments, §301.6223-1(d) and (e) are revised to provide that generally a partnership representative resignation or revocation is effective immediately upon receipt by the IRS. In cases where there is a revocation of a partnership representative designated by the IRS, the final regulations provide that the revocation is effective on the date the IRS sends notification that it determined that the revocation is valid.

The comment requesting that the revocation or resignation be immediately effective on the date it is signed or sent was not adopted. Until it is received by the IRS, the IRS cannot be aware of a revocation or resignation to give it effect. Before the revocation or resignation is received, the IRS will continue to work with the person designated to represent the partnership as the partnership representative. Nothing in

the regulations prevents a partnership or partnership representative from providing a revocation or resignation directly to the IRS employee handling the administrative proceeding to ensure that the IRS has received prompt notification of the change.

Proposed §301.6223-1(d)(1) and (e)(1) provided that the IRS will notify the partnership and other affected persons (the resigning partnership representative or designated individual or the partnership representative (and designated individual, if applicable) whose status is being revoked) when the IRS receives a resignation or revocation. To provide assurance that the IRS has received and processed a resignation or revocation, these sections of the final regulations have been revised to provide that, no later than 30 days after receipt of a valid notification of a revocation or resignation, the IRS will notify the partnership and the resigning partnership representative or designated individual or the partnership representative (and designated individual, if applicable) whose status is being revoked of its acceptance.

Proposed §301.6223-1(e)(4) provided that a partnership cannot revoke the designation of a partnership representative designated by the IRS unless the partnership receives permission from the IRS. The final regulations under §301.6223-1(e)(6) are clarified to provide that the IRS will not unreasonably withhold such permission. To avoid confusion, §301.6223-1(e)(3) and (6) have been revised to provide that when permission is granted, the IRS will send the notification described in paragraph §301.6223-1(e)(1). The effective date of the revocation is the date of that notification, which, if the IRS is granting permission for the revocation of the IRS-designated partnership representative, will be sent no later than 30 days after receipt of the revocation.

v. Notification of Change

Proposed §301.6223-1(d)(1) provided that a resigning partnership representative must notify the partnership and the IRS of the resignation, and proposed §301.6223-1(e)(1) provided that when a partnership revokes a partnership representative designation, the partnership must notify the partnership representative and the IRS. Proposed §301.6223-1(e)(3)(iii)(A)(2) required a notification of revocation to include a certification from the partner signing the revocation that the person has provided a copy of the revocation to the partnership and to the partnership representative whose designation is being revoked. Failure to include that certification rendered the revocation invalid. One comment recommended clarification on how this certification should be made when the partnership representative is deceased or dissolved or the partnership is no longer in contact with the partnership representative. The comment suggested that sending the copy of the revocation to the last known address should be sufficient. The comment also suggested that the regulations clarify whether there are any other restrictions on the method of notifying the partnership representative, such as proof of delivery or electronic delivery.

State law and any contractual arrangement between the parties generally control the terms of the relationship between the partnership and the partnership representative. Except as necessary to carry out the statute, the regulations implementing the centralized partnership audit regime attempt not to impose requirements with respect to interactions between the partnership and the partnership representative. The requirements in proposed §301.6223-1(d)(1) and (e)(1) that the partnership notify the partnership representative and that the partnership representative

notify the partnership were not consistent with this approach. Therefore, the Treasury Department and the IRS believe that including these requirements would unnecessarily create regulatory burdens on partnerships and partnership representatives without any significant benefit to tax administration. Accordingly, the final regulations have been revised to remove these requirements. Consequently, a resigning partnership representative and a partnership making a revocation must now only notify the IRS of the change in designation. As long as they notify the IRS as required under the regulations, the partnership and the partnership representative may agree to other notification requirements and are in the best position to determine if such requirements are necessary.

Another comment suggested that, in the case of an entity partnership representative, notification by the IRS of a revocation (as well as other notifications) should also be required to be sent to the designated individual. This comment was not adopted. In the case of a change to an entity partnership representative, the IRS will only send one notification and plans to adopt procedures under which such a notification will be sent to the partnership representative and addressed to the attention of the designated individual. This procedure should avoid the need to send duplicate notifications, which is burdensome for the IRS, while also allowing the partnership, the entity partnership representative, and the designated individual to arrange their affairs in a way to ensure that important notifications from the IRS are received by the appropriate persons.

Proposed §301.6223-1(e)(1) required the IRS to notify the partnership and the affected partnership representative of a revocation. This requirement has been revised

to provide that the IRS will only give notification of a revocation made after the issuance of a notice of selection for examination or a NAP. In contrast, the final regulations do not require the IRS to give notification of a revocation made simultaneously with an AAR. This change is warranted because in some cases, the IRS might accept an AAR as filed without further interaction with the partnership or communication with the partnership representative. Requiring the IRS to provide notification of a change in partnership representative when an AAR is filed is unnecessary unless the IRS selects the partnership for an examination as part of an administrative proceeding, in which case the partnership and the new partnership representative will receive a NAP, which is confirmation that the IRS received the change made on the AAR. The partnership can also confirm with the IRS at that time of receipt of the notice of selection for examination that the IRS received the change of partnership representative.

In addition, the final regulations clarify that the failure of the IRS to send any notifications under §§301.6223-1(d) and (e) to acknowledge receipt of a valid resignation or revocation does not invalidate the resignation or revocation. The notification provides the partnership with information about when the change in partnership representative became effective. However, the mere fact that a party does not receive an IRS notification does not mean that the resignation or revocation is not a valid change in partnership representative. A resignation or revocation that is valid under paragraph (d) or (e) of §301.6223-1 is valid regardless of whether the IRS sends notification of receipt.

C. IRS Designation of Partnership Representative

i. Determination that a Designation Is Not in Effect

Proposed §301.6223-1(f) provided the IRS may determine a designation is not in effect under certain circumstances. Under proposed §301.6223-1(f)(1), if the IRS makes a determination that a designation is not in effect, the IRS will notify the partnership and "the most recent partnership representative for that partnership taxable year" of that determination. One comment noted that there may be circumstances where there was never a partnership representative for the taxable year and recommended the regulations be clarified on this point. The comment describes an example where the partnership representative designated on the partnership return lacks substantial presence and concludes that there would be no partnership representative in that case.

This conclusion is incorrect. A partnership representative designated under §301.6223-1 is in effect unless and until the IRS determines otherwise. See §301.6223-1(b)(1). Therefore, a person designated on a partnership return as the partnership representative is the partnership representative for that taxable year even if the person lacks substantial presence as defined in §301.6223-1(b)(2) unless and until the IRS makes a determination, in accordance with §301.6223-1(f), that the designation is not in effect. Accordingly, prior to the issuance of a notification from the IRS under §301.6223-1(f)(1) that the partnership representative designation is not in effect, the designation of the partnership representative on the partnership return is in effect, even if the person designated lacks substantial presence in the United States.

Because a designated partnership representative is in effect unless and until the IRS determines otherwise, the vast majority of partnerships will have a partnership representative designation in effect because they will have designated the partnership

representative on the return as required under §301.6223-1(c). As a result, in most cases there will be a partnership representative to whom the notification must be sent. However, there may be situations in which the partnership failed to make a valid designation in accordance with §301.6223-1(c). To address these situations, the comment was adopted and §301.6223-1(f)(1) has been revised to clarify that the IRS is not required to notify the most recent partnership representative if the partnership failed to designate one.

Another comment recommended that any determination that a designation is not in effect should not be made effective until a new partnership representative has been designated, either by the partnership or the IRS. This comment was not adopted. If there has been a determination that a partnership representative designation is not in effect for a taxable year, the IRS has determined that the partnership representative is no longer a valid partnership representative for purposes of conducting an administrative proceeding of that partnership with respect to that taxable year. To keep the designation in place would run counter to this determination and would hinder the partnership administrative proceeding. If, for example, the partnership representative no longer meets the substantial presence requirements under §301.6223-1(b) because the partnership representative has left the country and, as a result, is unreachable, neither the partnership nor the IRS benefits from having that partnership representative designation remain in place until a new partnership representative is designated. The best result for both the partnership and the IRS is for the partnership to designate a new partnership representative who can move the administrative proceeding forward, which the partnership will have the opportunity to do prior to the IRS designating one under

the rules in §301.6223-1(f). Delaying the effective date of the determination that no partnership representative is in effect slows down the administrative proceeding, which does not benefit the partnership or the IRS.

Proposed §301.6223-1(f)(2) provided a list of reasons why the IRS might determine that a partnership representative designation is not in effect. Proposed §301.6223-1(f)(2) provided that the IRS may determine a designation is not in effect when, among other circumstances, the IRS has received multiple revocations within a 90-day period. See proposed §301.6223-1(e)(7). One comment suggested that the regulations should limit the discretion of the IRS to determine that a designation is not in effect under proposed §301.6223-1(f)(2) to situations where the IRS determines the multiple revocations represent an effort to delay or obstruct the administrative proceeding.

While there may be benign reasons for multiple revocations, the practical effect is the same regardless of the reason. The IRS's receipt of multiple revocations and designations will delay the administrative proceeding and prevent the IRS from effectively conducting an administrative proceeding. The administrative proceeding should not be delayed, intentionally or unintentionally, due to an inability to settle on a partnership representative.

Additionally, requiring the IRS to determine if multiple revocations were due to inadvertence or a desire to delay or obstruct the administrative proceeding adds additional burden that would be costly for both the partnership and the IRS to resolve. It would also inevitably lead to disputes between the IRS and partnerships regarding factually intensive questions underlying the intent of revocations. Any time and

resources devoted to discerning the purpose behind each revocation ultimately delays the entire administrative proceeding. There may be situations in which partners genuinely disagree as to who had authority to appoint the partnership representative or who the partnership representative should be. However, these disputes are best resolved by the partners themselves. The IRS should not be the arbiter of disputes between partners. Consequently, this comment has not been adopted.

There may be circumstances, however, when multiple revocations are necessary due to circumstances outside of the partnership's control, such as death or serious health issues or due to a ministerial error. To accommodate these types of circumstances, the proposed regulations provided the IRS with the discretion to keep the partnership designation in effect even though multiple revocations were received within a 90-day period. The proposed regulations did not require the IRS to make a determination that the designation is no longer in effect, but rather provided the IRS with the ability to make such a determination when appropriate. In retaining this rule, the final regulations accommodate situations where multiple revocations are not the result of bad faith and the IRS determines that allowing such revocations does not interfere with the IRS's ability to conduct the administrative proceeding.

Section 301.6223-1(f)(5) of the proposed regulations provided that the multiple-revocation rule was triggered if the IRS receives more than one revocation for the same partnership taxable year within a 90-day period. The final regulations remove the language "signed by different partners" from that provision. The fact that multiple revocations are received within 90 days is all that is required for the IRS to exercise its discretion under §301.6223-1(f)(2). The number of partners involved is not relevant to

whether multiple revocations are received and whether that could slow down the administrative proceeding. Accordingly, the regulations have been revised to make clear that the receipt of multiple revocations, not the receipt of multiple revocations signed by different partners, is what is required for the provision in §301.6223-1(f) to be satisfied.

In addition, the rule in the proposed regulations allowing the partnership the option to appoint a partnership representative before one is designated by the IRS has been revised in the case of multiple revocations. The final regulations provide that if the IRS determines a designation is not in effect in the case of multiple revocations, the IRS will designate a partnership representative, and unlike the general rule for IRS designation of a partnership representative, the partnership will not be given 30 days to designate a partnership representative. The stricter rule in the case of multiple revocations is necessary because providing the partnership another opportunity to designate a partnership representative would only perpetuate the existing problem and may delay the administrative proceeding. The final regulations also make clear that the multiple revocations rule applies to multiple revocations of a designated individual as well. Although the IRS may designate a new partnership representative in the case of multiple revocations, like any other IRS designation of a partnership representative, the partnership may revoke that partnership representative designation with the consent of the IRS.

In order to clarify the operation of the 90-day period under the multiple revocation rule, §301.6223-1(e)(7) was revised to provide that if the IRS receives a revocation (the current revocation), and, within the 90-day period prior to receiving the current

revocation, the IRS had received another revocation for the same partnership taxable year, the IRS may determine that a designation is not in effect. This change clarifies that the multiple revocation rule may apply to any revocation received by the IRS. When the IRS receives a revocation, the IRS may look back to the preceding 90 days and determine whether it had received a prior revocation for the same taxable year. If it had, the multiple revocation rule applies.

A time limitation for the IRS to notify the partnership that the designation is not in effect was also added to the multiple revocation rule in §301.6223-1(e)(7)(ii). That time limitation provides that if the IRS plans to determine a designation is not in effect due to receipt of multiple revocations, the IRS must do so within 90 days of the receipt of the current revocation the IRS is considering. For example, assume the partnership files two revocations with respect to the same taxable year - one on May 31, 2019 and one on August 25, 2019. With respect to the August 25th revocation, the IRS received the May 31st revocation within the 90-day period prior to August 25, 2019, meaning the multiple revocation rule under §301.6223-1(e)(7)(i) applies. Under the time limitation provided in §301.6223-1(e)(7)(ii), the IRS would then have 90 days from August 25, 2019 to determine a designation is not in effect. If, during that 90-day period starting with August 25, 2019, the IRS received another revocation, the multiple revocation rule under §301.6223-1(e)(7)(i) would again be triggered, and pursuant to §301.6223-1(e)(7)(ii), the IRS would have another 90 days from that additional revocation to determine a designation is not in effect. The time limitation under §301.6223-1(e)(7)(ii) provides certainty for the partnership and the IRS regarding when the IRS may determine that a designation is not in effect after multiple revocations have been filed.

Another comment recommended that a partnership that makes a "technically faulty" designation and receives notification from the IRS that no designation of a partnership representative is in effect should be given an opportunity to cure that designation before the IRS designates a new partnership representative. Nothing in the regulations prevents the IRS from providing the partnership with an opportunity to cure a defective designation prior to the IRS making its own designation. The IRS will provide additional guidance to its agents regarding designation of a partnership representative, and the IRS intends to generally recommend providing an opportunity to cure a defective designation. The IRS, however, may not allow for such an opportunity in all cases due to time restraints, multiple revocations, or the particular circumstances. Accordingly, this comment was not adopted. However, as the Treasury Department and the IRS develop more experience in this area, additional guidance may be issued.

Proposed §301.6223-1(f)(2) has also been amended to add a new paragraph (vii), which provides that the IRS may determine that a designation is not in effect for any other reason described in published guidance. This paragraph was added to allow flexibility to add other circumstances that may require the IRS to determine the designation is not in effect as the Treasury Department and the IRS gain more experience with the centralized partnership audit regime.

The final regulations also provide that the IRS is under no obligation to search for information about whether any of the circumstances listed in §301.6223-1(f)(2) exists. In addition, the final regulations clarify that even if the IRS has knowledge that one of the circumstances listed in §301.6223-1(f)(2) exists, the IRS is not required to determine that a designation is not in effect. This clarification was added for the reasons stated

above in this section of the preamble. For instance, partners may have filed multiple revocations within 90 days, but if there was a valid reason for the multiple revocations, the IRS may not need to determine the partnership representative designation is not in effect.

ii. IRS Designation

Numerous comments recommended changes to the rules under proposed §301.6223-1(f) governing IRS designation of a partnership representative when no designation is in effect. Several comments recommended that the regulations impose restrictions on whom the IRS may designate to serve as the partnership representative. Two comments suggested prohibiting the IRS from designating an IRS employee, agent, or contractor as the partnership representative. The Treasury Department and the IRS agree that an IRS employee, agent, or contractor who has no affiliation with the partnership subject to an administrative proceeding should not be designated as the partnership representative. An IRS employee, agent, or contractor may be a partner in the partnership subject to an administrative proceeding, however. Provided this interest in the partnership is unrelated to the individual's affiliation with the IRS, the individual's affiliation with the IRS should not preclude designation as the partnership representative. Accordingly, §301.6223-1(f)(5) was revised to provide that the IRS may not designate an IRS employee, agent, or contractor as the partnership representative unless the individual is a partner in the partnership subject to an administrative proceeding. Even if the IRS employee, agent, or contractor is a partner in such partnership, however, the IRS intends to avoid designating such an individual as the partnership representative if another suitable person is available.

Several comments recommended that the IRS be required to select a current partner to serve as the partnership representative. Another comment recommended that the IRS be required to select the partner with the largest profits interest. Another comment requested that the regulations include an ordering rule (that is, the IRS selects a partner first; if no partner is available, an employee, etc.). Another comment recommended that where the partnership is in bankruptcy, the IRS should select the trustee to serve as the partnership representative.

Imposing regulatory restrictions on whom the IRS can designate as the partnership representative could adversely affect the IRS's ability to select a suitable partnership representative, which harms both the IRS and the partnership. In some cases, a current partner might be the appropriate selection. In other cases, a former partner or an employee of the partnership might be more appropriate. For example, a current year partner might be more appropriate in a case where the current year partner is the person with access to the books and records of the partnership. However, a former partner has the advantage of being a partner from the year subject to an administrative proceeding and may be able to communicate with reviewed year partners more efficiently when seeking to modify the imputed underpayment. In the context of a partnership in bankruptcy, a non-member manager of the partnership, more familiar with the partnership's day-to-day business might be a more appropriate partnership representative than the bankruptcy trustee hired during the administrative proceeding. The Treasury Department and the IRS do not yet have experience with the new centralized partnership audit regime. As such, it would be unwise at this time to restrict whom the IRS may designate to be the partnership representative (other than as

described earlier in this section). Consequently, comments recommending these types of restrictions were not adopted.

One comment asked that the final regulations clarify that the IRS may select an entity partnership representative and that if it does so, the IRS must provide the partnership with the contact information of the designated individual. This comment was adopted. Therefore, if the IRS does designate an entity to be the partnership representative, the IRS will also appoint a designated individual and provide the contact information of the designated individual to the partnership. See §301.6223-1(f)(5)(i).

Proposed §301.6223-1(f)(5)(ii) provides a list of factors the IRS "may" consider when designating a partnership representative. A comment suggested that proposed §301.6223-1(f)(5)(ii) be revised to provide that the IRS "will ordinarily" consider "one or more" of those factors. The IRS intends to consider these factors when designating a partnership representative. Because the suggested language "will ordinarily" more accurately reflects the IRS's intent this comment has been adopted. However, the final regulations have also been revised to clarify that the IRS is not obligated to search for information about the factors to be considered and that IRS knowledge of any of the factors does not obligate the IRS to select a particular person as partnership representative. This clarification is particularly important in the case of a partnership that is nonresponsive because the IRS may not be able to consider certain factors where the partners are unreachable and certain information is not readily attainable. The IRS, therefore, will ordinarily consider these factors, but the IRS may not consider the factors in every case.

The final regulations have also been revised to clarify that these factors are not the equivalent of requirements for eligibility to be designated by the IRS as a partnership representative. Only one factor may be applicable to the person designated as partnership representative and yet that person may be the one who is appropriate to designate based on who is available and willing to serve and the unique facts and circumstances of the partnership, the administrative proceeding, or other issues. Accordingly, §301.6223-1(f)(5)(ii) has been revised to clarify that the IRS will ordinarily consider one or more of the factors when determining whom to designate as partnership representative, no single factor is determinative, and a person may be designated by the IRS as partnership representative even if none of the factors is applicable.

Several comments requested changes to the factors listed in proposed §301.6223-1(f)(5)(ii). One comment recommended that the IRS generally consider the profits interests of the partners. Considering the profits interest of a partner is reasonable because profits interest can in some circumstances directly affect how the results of an administrative proceeding will affect an individual partner. Additionally, because profits interest is a factor that can be determined from the face of the partnership return for most partnerships, consideration of a partner's profits interest when designating a partnership representative is administrable for the IRS. Therefore, §301.6223-1(f)(5)(ii) has been revised to adopt this comment.

One comment suggested that the IRS should consider the person's involvement in the partnership's business in determining whether to designate that person as the partnership representative. The regulations already contain factors that consider the person's overall knowledge of the partnership and its books and records. These factors

already incorporate consideration of the person's involvement in the partnership's business. Because the proposed factor duplicates those already included, this comment was not adopted.

Several comments made suggestions with respect to the partnership's inability to revoke a partnership representative designation made by the IRS without having IRS consent of that revocation. One comment disagreed in general with this rule and recommended that the partnership be able to revoke a partnership designation made by the IRS without the consent of the IRS. Another comment stated that the partnership should be involved in the IRS's designation of a partnership representative. Another comment suggested that the partnership should be able to revoke a partnership representative designated by the IRS if there is a bona fide dispute over the capacity of the partnership representative designated by the IRS.

The rule that the partnership must seek the IRS's permission before revoking an IRS-designated partnership representative is premised on the fact that the partnership has not properly designated a partnership representative on its own. If the IRS has to make a designation, the partnership has either failed to designate its own choice for partnership representative or has made multiple revocations.

Allowing the partnership to unilaterally revoke a partnership representative that had been designated by the IRS undermines the purpose of the IRS designation. For an administrative proceeding to function properly and without delay and for the partnership to be represented in that administrative proceeding, a person who can act for the partnership and who is an eligible partnership representative must be designated. Additionally, because the IRS only designates a partnership representative

when a partnership has failed to properly make its own designation, the partnership is ultimately in control over whether the IRS will need to designate a partnership representative. Consequently, the final regulations retain the rule that a partnership may revoke a partnership representative designated by the IRS only with the consent of the IRS, and the comments were not adopted.

D. Authority of the Partnership Representative

i. Binding Effect of Actions Taken by the Partnership Representative

One comment suggested that, given that partnerships are formed under state law, state law should control the designation and authority of the partnership representative. Another comment suggested that the final regulations should clarify that the principles of agency law apply to the partnership representative, and that the partnership representative "will be operating as the agent on behalf of the partnership subject to the same control by the partnership as any principal would have over an agent." These comments relate to proposed §301.6223-2(c), which provided that no state law, partnership agreement, or other document could limit the authority of the partnership representative. Because the authority of the partnership representative under federal law preempts any state law requirements these comments were not adopted. The language of §301.6223-2(d) (which corresponds with proposed §301.6223-2(c)) has been revised to clarify that this rule is applicable only with respect to the centralized partnership audit regime. Accordingly, the final regulations provide that the failure to adhere to state law requirements has no effect on actions taken by the partnership representative with respect to the centralized partnership regime.

The regulations are drafted to provide significant flexibility to the partnership to determine who will represent it and for the partnership and the partnership representative to negotiate the terms of their relationship. The Treasury Department and the IRS have attempted to refrain from creating unnecessary regulatory burdens. The partnership and the partnership representative are free to enter into contractual agreements to define the scope and limits of their relationship. However, because the IRS is not a party to these agreements, it is not bound by them. Any remedy the partnership would have against the partnership representative if the partnership representative failed to act in accordance with those agreements would be under state law with respect to the partnership representative.

Section 301.6223-2(d) is not intended to prevent partnerships from taking advantage of state law remedies for partnerships who wish to restrict a partnership representative's authority under state law. Rather, the regulations leave the enforcement of such restrictions to the relevant parties, which simplifies the administrative proceeding consistent with the design of the centralized partnership audit regime. Under TEFRA, significant resources were often expended by the IRS and the partnership to determine what state law restrictions might affect who could act for the partnership and under what circumstances. The centralized partnership audit regime removes this aspect of TEFRA.

ii. Authority

One comment recommended that where there is a question regarding a person's authority to serve as the partnership representative, the partnership should provide a notice signed by all the partners in the partnership as conclusive evidence that a

particular person has the authority to serve as the partnership representative. This comment was not adopted because under section 6223 the authority of a person to act as partnership representative is based on whether the person was properly designated as the partnership representative in accordance with section 6223 and the regulations, not on whether state law or notice from the partners confirms such authority.

One comment suggested that clarifying language be added to the end of a sentence in §301.6223-2(a) providing that a notice of final partnership adjustment is final when not contested by the partnership representative "on behalf of the partnership." The Treasury Department and the IRS agree that as drafted §301.6223-2(a) was confusing. It is the partnership that contests the notice of final partnership adjustment, even if it does so through the partnership representative. Accordingly, the final regulations clarify this language by revising §301.6223-2(a) to remove the reference to the partnership representative.

E. Other Comments and Changes

A comment recommended that proposed §301.6223-2 be clarified to provide that a partnership representative may engage a person to act on behalf of the partnership representative under a power of attorney during the administrative proceeding (referred to as a "POA") and that the POA can participate in meetings or receive copies of correspondence. Nothing in the regulations prevents the partnership representative from engaging a POA for this purpose. Language has been added to §301.6223-2(d) to clarify this issue. Language has also been added to §301.6223-1(a) to clarify that appointment of a POA does not designate the POA as partnership representative.

A new paragraph (c) has been added to the final regulations to address the effect of withdrawal of a NAP on actions taken by a partnership representative. Proposed §301.6231-1(f) (December 19 NPRM) allows the IRS to withdraw a NAP after it has been issued. Proposed §301.6231-1(f) further provides that the withdrawn NAP has no effect for purposes of the centralized partnership audit regime.

The partnership representative may have taken actions before withdrawal of the NAP. In addition, after the NAP has been issued, but before the NAP has been withdrawn, the partnership representative may have changed. Section 301.6223-2(c) has been added to the final regulations to clarify that even though the withdrawn NAP has no effect, any actions taken by a partnership representative (or successor partnership representative after a change in partnership representative that occurred after the issuance of the NAP and before the NAP was withdrawn) are binding on the partnership, even though the NAP has been withdrawn. An example was also added to illustrate this clarification under §301.6223-2(c) regarding withdrawal of the NAP. See §301.6223-2(e), Example 6. As a result of this new paragraph (c), proposed §301.6223-2(c) was moved to §301.6223-2(d).

One comment suggested that a partnership representative should have to affirm that he or she will serve as the partnership representative by checking a box on the partnership return where the designation is made. The comment suggested that having such an affirmation will save time at the beginning of the administrative proceeding.

Adopting this comment would not save time at the beginning of the administrative proceeding because even if the box was checked by the partnership representative at the time the return is filed, by the time the IRS commences the administrative

proceeding, the partnership representative may no longer be available or willing to serve. Similarly, a partnership representative might erroneously not check the box at the time the return is filed but be willing to serve at the time the administrative proceeding commences. Whether the partnership representative checked the box at one point in time is not the right proxy for whether the partnership representative is willing to serve as the partnership representative at some other point in time. Rather than add this unnecessary requirement, the regulations provide that the person designated as the partnership representative is the partnership representative until there is a resignation, revocation, or the IRS determines no designation is in effect. Once the administrative proceeding begins, an unwilling partnership representative may resign or the partnership may revoke the partnership representative and designate a successor. Accordingly, this comment was not adopted.

One comment suggested that the partnership representative be required to notify partners of significant developments (for example, extensions of the period of limitations, settlements, petitioning a court, etc.). There is no requirement in the statute for the partnership representative to notify any partner of significant developments. This is a departure from TEFRA, which required certain notifications and provided participation rights for certain partners. The proposed regulations adhered to the legislative judgment that the partnership representative is the sole representative of the partnership, and the actions of the partnership representative bind the partners. Nothing in the proposed regulations prevents the partnership from contracting with the partnership representative to require the partnership representative to notify the partnership or the partners of any developments, significant or otherwise.

The Treasury Department and the IRS have determined that the government should not mandate how and when the partnership representative communicates with partners or other persons. By remaining silent on this issue, the regulations allow a partnership, its partners, and the partnership representative to arrange their own affairs without unnecessary regulatory requirements that interfere with these relationships. Accordingly, this comment was not adopted.

Proposed §1.6223-1(a) provided that a partnership representative must update the partnership representative's contact information when such information changes as required by forms, instructions, and other guidance prescribed by the IRS. One comment requested that a partnership representative only be required to update its contact information upon the selection of the partnership for an examination or the filing of an AAR. At this time, there is no requirement that the partnership representative update contact information prior to selection for examination or the filing of an AAR. Experience with the new regime may inform the Treasury Department and the IRS that updating contact information prior to selection for an examination or filing an AAR is helpful or important. The final regulations have been clarified to provide that contact information must be updated if required by forms, instructions, or other guidance published by the IRS.

2. Election into Centralized Partnership Audit Regime

The Treasury Department and the IRS received no comments with respect to proposed §301.9100-22 and made no substantive revisions to the proposed regulations. Accordingly, the final regulations adopt the proposed regulations without any

substantive change. Minor editorial changes were made. The temporary regulations are removed.

Special Analyses

This regulation is not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Department of the Treasury and the Office of Management and Budget regarding review of tax regulations. Therefore, a regulatory impact assessment is not required.

It is hereby certified that these rules will not have a significant economic impact on a substantial number of small entities. Although these rules may affect a substantial number of small entities, the economic impact is not substantial because these rules merely provide clarifying guidance on the statutory requirements to designate a partnership representative. These rules reduce the existing burden on partnerships to comply with the statutory requirements by providing clear rules and guidance regarding the statutory requirements for partnerships required to designate a partnership representative under section 6223 and for partnerships to make an election for the centralized partnership audit regime to apply to taxable years beginning after November 2, 2015 and before January 1, 2018. For the reasons stated, the final rules will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. Chapter 6) is not required.

Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the

Small Business Administration for comment on its impact on small business, and no comments were received.

Statement of Availability of IRS Documents

IRS Revenue Procedures, Revenue Rulings, Notices and other guidance cited in this preamble are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at www.irs.gov.

Drafting Information

The principal authors of these final regulations are Joy E. Gerdy Zogby of the Office of the Associate Chief Counsel (Procedure and Administration) and Jennifer M. Black of the Office of the Associate Chief Counsel (Procedure and Administration). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.6223-1 is added to read as follows:

§301.6223-1 Partnership representative.

(a) Each partnership must have a partnership representative. A partnership subject to subchapter C of chapter 63 of the Internal Revenue Code (subchapter C of chapter 63) for a partnership taxable year must designate a partnership representative for the partnership taxable year in accordance with this section. There may be only one designated partnership representative for a partnership taxable year at any time. The designation of a partnership representative for a partnership taxable year under this section remains in effect until the date on which the designation of the partnership representative is terminated by valid resignation (as described in paragraph (d) of this section), valid revocation (as described in paragraph (e) of this section), or a determination by the Internal Revenue Service (IRS) that the designation is not in effect (as described in paragraph (f) of this section). A designation of a partnership representative for a partnership taxable year under paragraphs (e) or (f) of this section supersedes all prior designations of a partnership representative for that year. If required by forms, instructions, and other guidance prescribed by the IRS, a partnership representative must update the partnership representative's contact information when such information changes. Only a person designated as a partnership representative in accordance with this section will be recognized as the partnership representative under section 6223. A power of attorney (including a Form 2848, Power of Attorney) may not be used to designate a partnership representative. See §301.6223-2(a), (b), and (c) with regard to the binding effect of actions taken by the partnership representative. See §301.6223-2(d) with regard to the sole authority of the partnership representative to act

on behalf of the partnership. See paragraph (f) of this section for rules regarding designation of a partnership representative by the IRS.

(b) Eligibility to serve as a partnership representative—(1) In general. Any person (as defined in section 7701(a)(1)) that meets the requirements of paragraphs (b)(2) and (3) of this section, as applicable, is eligible to serve as a partnership representative, including a wholly owned entity disregarded as separate from its owner for federal tax purposes. A person designated under this section as partnership representative is deemed to be eligible to serve as the partnership representative unless and until the IRS determines that the person is ineligible. A partnership can designate itself as its own partnership representative provided it meets the requirements of paragraphs (b)(2) and (3) of this section.

(2) Substantial presence in the United States. A person must have substantial presence in the United States to be the partnership representative. A person has substantial presence in the United States for the purposes of this section if—

(i) The person makes themselves available to meet in person with the IRS in the United States at a reasonable time and place as determined by the IRS in accordance with §301.7605-1; and

(ii) The person has a United States taxpayer identification number, a street address that is in the United States and a telephone number with a United States area code.

(3) Eligibility of an entity to be a partnership representative--(i) In general. A person who is not an individual may be a partnership representative only if an individual who meets the requirements of paragraph (b)(2) of this section is appointed by the

partnership as the sole individual through whom the partnership representative will act for all purposes under subchapter C of chapter 63. A partnership representative meeting the requirements of this paragraph (b)(3) is an entity partnership representative, and the individual through whom such entity partnership representative acts is the designated individual. Designated individual status automatically terminates on the date that the designation of the entity partnership representative for which the designated individual was appointed is no longer in effect in accordance with paragraph (d), (e), or (f) of this section.

(ii) Appointment of a designated individual. A designated individual must be appointed by the partnership at the time of the designation of the entity partnership representative in the manner prescribed by the IRS in forms, instructions, and other guidance. Accordingly, if the entity partnership representative is designated on the partnership return for the taxable year in accordance with paragraph (c)(2) of this section, the designated individual must be appointed by the partnership at that time. Similarly, if the entity partnership representative is designated under paragraph (e) of this section (regarding revocation and subsequent designation after revocation of a partnership representative), the designated individual must be appointed at that time. If the partnership fails to appoint a designated individual at the time and in the manner set forth in this paragraph (b)(3)(ii), the IRS may determine that the entity partnership representative designation is not in effect under paragraph (f) of this section.

(4) Examples. The following examples illustrate the rules of this paragraph (b).

Example 1. Partnership designates PR as its partnership representative for its 2018 tax year on its timely filed 2018 partnership return. The IRS initiates an administrative proceeding with respect to Partnership's 2018 tax year. PR has a United States taxpayer identification number, a United States street address, and a phone

number with a United States area code. The IRS contacts PR and requests an in-person meeting with respect to the administrative proceeding. PR works with the IRS and agrees to meet. PR has substantial presence in the United States because she meets all the requirements under paragraph (b)(2) of this section.

Example 2. The facts are the same as in Example 1 of this paragraph (b)(4), except that PR is an entity and Partnership appointed DI, a designated individual to act on behalf of PR for its 2018 tax year on its timely filed 2018 partnership return. DI has a United States taxpayer identification number and a phone number with a United States area code. However, the address provided for DI is not a United States address. Accordingly, PR is not an eligible partnership representative because PR is an entity and DI does not satisfy the requirements of paragraph (b)(3)(i) of this section. Although DI does not have substantial presence in the United States under paragraph (b)(2) of this section and therefore PR is not an eligible partnership representative, until there is a resignation or revocation under paragraph (d) or (e) of this section or until the IRS determines the partnership representative designation is no longer in effect under paragraph (f) of this section, the designation of PR as the partnership representative remains in effect in accordance with paragraph (a) of this section, and Partnership and all its partners are bound by the actions of PR as the partnership representative.

Example 3. The facts are the same as in Example 1 of this paragraph (b)(4), except PR works in a foreign country and spends the majority of her time there. Unless PR otherwise fails to meet one of the requirements under paragraph (b)(2) of this section, PR has substantial presence in the United States. However, even if PR fails to meet one of the requirements under paragraph (b)(2) of this section, until there is a resignation or revocation under paragraph (d) or (e) of this section or until the IRS determines the partnership representative designation is no longer in effect under paragraph (f) of this section, the designation of PR as the partnership representative remains in effect in accordance with paragraph (a) of this section, and Partnership and all its partners are bound by the actions of PR as the partnership representative.

(c) Designation of partnership representative by the partnership—(1) In general. The partnership must designate a partnership representative separately for each taxable year. The designation of a partnership representative for one taxable year is effective only for the taxable year for which it is made.

(2) Designation. Except in the case of a designation of a partnership representative (and the appointment of the designated individual, if applicable) after an event described in paragraph (d) of this section (regarding resignation), paragraph (e) of this section (regarding revocation by the partnership), or paragraph (f) of this section

(regarding designation made by the IRS), or except as prescribed in forms, instructions, and other guidance, designation of a partnership representative (and the appointment of the designated individual, if applicable) must be made on the partnership return for the partnership taxable year to which the designation relates and must include all of the information required by forms, instructions, and other guidance, including information about the designated individual if paragraph (b)(3) of this section applies. The designation of the partnership representative (and the appointment of the designated individual, if applicable) is effective on the date that the partnership return is filed.

(3) Example. The following example illustrates the rules of this paragraph (c).

Example. Partnership properly designates PR1 as its partnership representative for taxable year 2018 on its 2018 partnership return. Partnership designates PR2 as its partnership representative for taxable year 2021 on its 2021 partnership return. In 2022, the IRS mails Partnership a notice of administrative proceeding under section 6231(a)(1) with respect to Partnership's 2018 taxable year. PR1 is the partnership representative for the 2018 partnership taxable year, notwithstanding the designation of PR2 as partnership representative for the 2021 partnership taxable year.

(d) Resignations--(1) In general. A partnership representative or designated individual may resign as partnership representative or designated individual, as applicable, for a partnership taxable year for any reason by notifying the IRS in writing of the resignation in accordance with forms, instructions, and other guidance prescribed by the IRS. A resigning partnership representative may not designate a successor partnership representative. A resigning designated individual may not designate a successor designated individual or partnership representative. No later than 30 days after the IRS receives a written notification of resignation, the IRS will send written confirmation of receipt of the written notification to the partnership and the resigning partnership representative (to the attention of the designated individual if appropriate).

A failure by the IRS to send any notification under this paragraph (d) does not invalidate a valid resignation made pursuant to this paragraph (d). A failure by the partnership representative (or designated individual, if the designated individual is the person resigning) to satisfy the requirements of this paragraph (d) is treated as if there were no resignation, and the partnership representative designation (and designated individual appointment, if applicable) remains in effect until the designation (or appointment) is terminated by valid resignation (as described in this paragraph (d)), valid revocation by the partnership (as described in paragraph (e) of this section), or a determination by the IRS that the designation is not in effect (as described in paragraph (f) of this section). See §301.6223-2 for binding nature of actions taken by the partnership representative or designated individual on behalf of a partnership representative, if applicable, prior to resignation.

(2) Time for resignation. A partnership representative or designated individual may submit the written notification of resignation described in paragraph (d)(1) of this section to the IRS only after the IRS issues a notice of administrative proceeding (NAP) under section 6231(a)(1) for the partnership taxable year for which the partnership representative designation is in effect or at such other time as prescribed by the IRS in forms, instructions, or other guidance. If the IRS withdraws the NAP pursuant to §301.6231-1(f), any valid resignation by the partnership representative or designated individual under this paragraph (d) prior to the withdrawal of the NAP remains in effect.

(3) Effective date of resignation. A valid resignation is immediately effective upon the IRS's receipt of the written notification described in paragraph (d)(1) of this section. As of the effective date of the resignation—

(i) The resigning partnership representative (and designated individual, if applicable) may not take any action on behalf of the partnership with respect to the partnership taxable year affected by the resignation;

(ii) The partnership representative designation is no longer in effect with respect to the partnership taxable year affected by the resignation;

(iii) In the case of a resigning entity partnership representative, the appointment of the designated individual is no longer in effect with respect to the partnership taxable year affected by the resignation; and

(iv) In the case of a resigning designated individual, the designation of the entity partnership representative is no longer in effect with respect to the partnership taxable year affected by the resignation.

(e) Revocations–(1) In general. A partnership may revoke a designation of a partnership representative or appointment of a designated individual for a partnership taxable year for any reason by notifying the IRS in writing of the revocation in accordance with forms, instructions, and other guidance prescribed by the IRS. The partnership may make such revocation regardless of when and how the designation or appointment was made, except as provided in paragraph (e)(6) of this section (regarding designation by the IRS). The revocation must include the designation of a successor partnership representative (and the appointment of a designated individual, if applicable). In the case of a revocation of only the designated individual appointment, the partnership must designate a successor designated individual. No later than 30 days after the IRS receives a written notification of revocation submitted at the time described in paragraph (e)(2) of this section, the IRS will send written confirmation of

receipt of the written notification to the partnership, the revoked partnership representative or, in the case of a revocation of only the appointment of a designated individual, to the revoked designated individual, and to the newly designated partnership representative. In the case of a revocation of an entity partnership representative, the notification will be sent to the entity partnership representative, to the attention of the designated individual. A failure by the IRS to send any notification under this paragraph (e) does not invalidate a valid revocation made pursuant to this paragraph (e). A failure by the partnership to satisfy the requirements of this paragraph (e), including failure to designate a successor, is treated as if no revocation has occurred and the partnership representative designation (and designated individual appointment, if applicable) remains in effect until the designation (or appointment) is terminated either by valid resignation (as described in paragraph (d) of this section), valid revocation by the partnership (as described in this paragraph (e)), or determination by the IRS that the designation is not in effect (as described in paragraph (f) of this section). See §301.6223-2 for binding nature of actions taken by the partnership representative or designated individual on behalf of a partnership representative, if applicable, prior to revocation.

(2) Time for revocation--(i) Revocation during an administrative proceeding. Except as provided in paragraph (e)(2)(ii) of this section or in forms, instructions, or other guidance prescribed by the IRS, a partnership may revoke a designation of a partnership representative or appointment of a designated individual only after the IRS issues a notice of selection for examination or a NAP under section 6231(a)(1) for the partnership taxable year for which the designation or appointment is in effect. If the IRS

withdraws the NAP pursuant to §301.6231-1(f), any valid revocation of a partnership representative designation or designated individual appointment under this paragraph (e) prior to the withdrawal of the NAP remains in effect.

(ii) Revocation with an AAR. The partnership may revoke a designation of a partnership representative or appointment of a designated individual for the taxable year prior to receiving a notice of selection for examination or a NAP by filing a valid administrative adjustment request (AAR) in accordance with section 6227 for a partnership taxable year. A partnership may not use the form prescribed by the IRS for filing an AAR solely for the purpose of revoking a designation of a partnership representative or appointment of a designated individual. See §301.6227-1 for the rules regarding the time and manner of filing an AAR.

(3) Effective date of revocation. Except as described in paragraph (e)(6)(ii) of this section (regarding the effective date of a revocation of a partnership representative designated by the IRS under paragraph (f)(5) of this section), a valid revocation is immediately effective upon the IRS's receipt of the written notification described in paragraph (e)(1) of this section. A revocation of a partnership representative designation and a designation of a new partnership representative (and appointment of a new designated individual, if applicable) is effective on the date the partnership files a valid AAR. Similarly, a revocation of a designated individual appointment and appointment of a new designated individual is effective on the date the partnership files a valid AAR. As of the effective date of the revocation—

(i) The revoked partnership representative (and designated individual, if applicable) may not take any action on behalf of the partnership with respect to the partnership taxable year affected by the revocation;

(ii) The designation of the revoked partnership representative is no longer in effect, and the successor partnership representative designation (and designated individual appointment, if applicable) is in effect with respect to the partnership taxable year affected by the revocation;

(iii) In the case of a revoked entity partnership representative, the appointment of the designated individual is no longer in effect with respect to the partnership taxable year affected by the revocation; and

(iv) In the case of a revoked designated individual where the designation of the entity partnership representative has not been revoked, the revoked designated individual may not take any action on behalf of the partnership with respect to the partnership taxable year affected by the revocation, the appointment of the revoked designated individual is no longer in effect, and the appointment of the successor designated individual is in effect.

(4) Partners who may sign revocation. A revocation under this paragraph (e) must be signed by a person who was a partner at any time during the partnership taxable year to which the revocation relates or as provided in forms, instructions, and other guidance prescribed by the IRS.

(5) Form of the revocation. The written notification of revocation described in paragraph (e)(1) of this section must include the items described in this paragraph

(e)(5). A notification of revocation described in paragraph (e)(1) of this section that does not include each of the following items is not a valid revocation:

(i) A certification under penalties of perjury that the person signing the notification is a partner described in paragraph (e)(4) of this section authorized by the partnership to revoke the designation of the partnership representative (or appointment of the designated individual, if applicable).

(ii) A statement that the person signing the notification is revoking the designation of the partnership representative (or appointment of the designated individual, if applicable);

(iii) A designation of a successor partnership representative (and appointment of a designated individual, if applicable) in accordance with this section and forms, instructions, and other guidance prescribed by the IRS; and

(iv) In the case of a revocation of an appointment of a designated individual, appointment of a successor designated individual in accordance with this section and forms, instructions, and other guidance prescribed by the IRS.

(6) Partnership representative designated by the IRS—(i) In general. If a partnership representative is designated (and a designated individual is appointed, if applicable) by the IRS pursuant to paragraph (f)(5) of this section, the partnership may only revoke that designation (or the appointment of the designated individual, if applicable) with the permission of the IRS, which the IRS will not unreasonably withhold.

(ii) Effective date of revocation. The effective date of any revocation submitted in accordance with paragraph (e)(6)(i) of this section is the date on which the IRS sends notification that the revocation is valid.

(7) Multiple revocations --(i) In general. The IRS may determine that a designation is not in effect under paragraph (f) of this section if:

(A) The IRS receives a revocation of a designation of a partnership representative or appointment of a designated individual, and

(B) Within the 90-day period prior to the date the revocation described in paragraph (e)(7)(i)(A) of this section was received, the IRS received another revocation for the same partnership taxable year.

(ii) Time limitation. The IRS may not determine that a designation is not in effect in accordance with paragraph (e)(7)(i) of this section later than 90 days after the IRS's receipt of the revocation described in paragraph (e)(7)(i)(A) of this section.

(8) Examples. The following examples illustrate the rules of this paragraph (e).

Example 1. Partnership properly designates PR, an individual, as partnership representative for its 2018 taxable year on its timely filed 2018 partnership return. In 2020, Partnership mails written notification to the IRS to revoke designation of PR as its partnership representative for Partnership's 2018 taxable year. The revocation is not made in connection with an AAR for Partnership's 2018 taxable year, and the IRS has not mailed Partnership a notice of selection for examination or a NAP under section 6231(a)(1) with respect to Partnership's 2018 taxable year. Because the revocation was not made when permitted under paragraph (e)(2) of this section, the revocation is not effective and B remains the partnership representative for Partnership's 2018 taxable year unless and until B's status as partnership representative is properly revoked under paragraph (e) of this section or terminated in accordance with paragraph (d) (regarding resignation) or (f) (regarding IRS designation) of this section.

Example 2. During an administrative proceeding with respect to Partnership's 2018 taxable year, Partnership provides the IRS with written notification to revoke its designation of PR, an individual, as its partnership representative for the 2018 taxable year. The written notification does not include a designation of a new partnership representative for Partnership's 2018 taxable year. Because the revocation does not include a designation of a new partnership representative as required under paragraph (e)(1) of this section, the revocation is not effective and PR remains the partnership representative for Partnership's 2018 taxable year unless and until B's status as partnership representative is properly revoked under paragraph (e) of this section or terminated in accordance with paragraph (d) (regarding resignation) or (f) (regarding IRS designation) of this section.

(f) Designation of the partnership representative by the IRS–(1) In general. If the IRS determines that a designation of a partnership representative is not in effect for a partnership taxable year in accordance with paragraph (f)(2) of this section, the IRS will notify the partnership that a partnership representative designation is not in effect. The IRS will also notify the most recent partnership representative for the partnership taxable year, except as described in paragraph (f)(2)(iii) of this section. In the case of an entity partnership representative, the notification will be sent to the entity partnership representative, to the attention of the designated individual. The determination that a designation is not in effect is effective on the date the IRS mails the notification. Except as described in paragraph (f)(4) of this section, the partnership may designate, in accordance with paragraph (f)(3) of this section, a successor partnership representative (and designated individual, if applicable) eligible under paragraph (b) of this section within 30 days of the date the IRS mails the notification. In the case of a resignation of a partnership representative, this notification may include the written confirmation of receipt described in paragraph (d)(1) of this section. See paragraph (f)(2)(iv) of this section. If the partnership does not designate a successor within 30 days from the date of IRS notification, the IRS will designate a partnership representative in accordance with paragraph (f)(5) of this section. A partnership representative designation made in accordance with paragraphs (c), (e), or (f) of this section remains in effect until the IRS determines the designation is not in effect. See §301.6223-2 for binding nature of actions taken by the partnership representative or designated individual on behalf of a partnership representative, if applicable, prior to a determination by the IRS that the designation is not in effect.

(2) IRS determination that partnership representative designation not in effect. The IRS may, but is not required to, determine that a partnership representative designation is not in effect. The IRS is not obligated to search for or otherwise seek out information related to the circumstances in which the IRS may determine a partnership representative designation is not in effect, and the fact that the IRS is aware of any such circumstances does not obligate the IRS to determine that a partnership representative designation is not in effect. The IRS may determine that the partnership representative designation is not in effect if the IRS determines that –

(i) The partnership representative or the designated individual does not have substantial presence as described in paragraph (b)(2) of this section;

(ii) The partnership failed to appoint a designated individual as described in paragraph (b)(3) of this section, as applicable;

(iii) The partnership failed to make a valid designation as described in paragraph (c) of this section;

(iv) The partnership representative or designated individual resigns as described in paragraph (d) of this section;

(v) The partnership has made multiple revocations as described in paragraph (e)(7) of this section; or

(vi) The partnership representative designation is no longer in effect as described in other published guidance.

(3) Designation by the partnership during the 30-day period. Designation of a partnership representative (and appointment of a designated individual, if applicable) by the partnership during the 30-day period described in paragraph (f)(1) of this section

must be made in accordance with forms, instructions, and other guidance prescribed by the IRS. If the partnership fails to provide all information required by forms, instructions, and other guidance, the partnership will have failed to make a designation (and appointment, if applicable). If the partnership does not fully comply with the requirement of this paragraph (f)(3) within the 30-day period described in paragraph (f)(1) of this section, the IRS will designate a partnership representative (and appoint a designated individual, if applicable).

(4) No opportunity for designation by the partnership in the case of multiple revocations. In the event that the IRS determines a partnership representative designation is not in effect due to multiple revocations as described in paragraph (e)(7) of this section, the partnership will not be given an opportunity to designate the successor partnership representative prior to the designation by the IRS as described in paragraph (f)(5) of this section. However, see paragraph (e)(6) of this section regarding revocation of a partnership representative designated by the IRS.

(5) Designation by the IRS–(i) In general. The IRS designates a partnership representative under this paragraph (f)(5) by notifying the partnership of the name, address, and telephone number of the new partnership representative. If the IRS designates an entity partnership representative, the IRS will also appoint a designated individual to act on behalf of the entity partnership representative. The designation of a partnership representative (and appointment of a designated individual, if applicable) by the IRS is effective on the date on which the IRS mails the notification of the designation (and appointment, if applicable) to the partnership. The IRS will also mail a copy of the notification of the designation (and appointment, if applicable) to the new partnership

representative (through the new designated individual, if applicable) that has been designated (and appointed, if applicable) by the IRS under this section.

(ii) Factors considered when partnership representative designated by the IRS. The IRS will ordinarily consider one or more of the factors set forth in this paragraph (f)(5)(ii) when determining whom to designate as partnership representative. No single factor is determinative, and other than as described in paragraph (f)(5)(iii) of this section, the IRS may exercise its discretion to designate a person as partnership representative even if none of the factors are applicable to such person. The factors are not requirements for eligibility to be designated by the IRS as partnership representative; the only requirements for eligibility are described under paragraph (b) of this section. The IRS is not obligated to search for or otherwise seek out information related to the factors, and the fact that the IRS is aware of any information related to such factors does not obligate the IRS to designate a particular person. Although the IRS may designate any person to be the partnership representative, a principal consideration in determining whom to designate as a partnership representative is whether there is a reviewed year partner that is eligible to serve as the partnership representative in accordance with paragraph (b)(1) of this section or whether there is a partner at the time the partnership representative designation is made that is eligible to serve as the partnership representative. Other factors that will ordinarily be considered by the IRS in determining whom to designate as a partnership representative include, but are not limited to:

(A) The views of the partners having a majority interest in the partnership regarding the designation;

(B) The general knowledge of the person in tax matters and the administrative operation of the partnership;

(C) The person's access to the books and records of the partnership;

(D) Whether the person is a United States person (within the meaning of section 7701(a)(30)); and

(E) The profits interest of the partner in the case of a partner.

(iii) IRS employees. The IRS will not designate a current employee, agent, or contractor of the IRS as the partnership representative unless that employee, agent, or contractor was a reviewed year partner or is currently a partner in the partnership.

(6) Examples. The following examples illustrate the rules of this paragraph (f).

Example 1. The IRS determines that Partnership has designated a partnership representative that does not have substantial presence in the United States as defined in paragraph (b)(2) of this section. The IRS may, but is not required to, determine that the designation is not in effect and designate a new partnership representative after following the procedures in this paragraph (f).

Example 2. Partnership designates as its partnership representative a corporation but fails to appoint a designated individual to act on behalf of the corporation as required under paragraph (b)(3) of this section. The IRS may, but is not required to, determine that the partnership representative designation is not in effect and may designate a new partnership representative after following the procedures in this paragraph (f).

Example 3. The partnership representative resigns pursuant to paragraph (d) of this section. The IRS mails Partnership a notification informing Partnership that no designation is in effect and that the IRS plans to designate a new partnership representative. Partnership fails to respond within 30 days of the date the IRS mails the notification. The IRS must designate a partnership representative pursuant to this paragraph (f).

Example 4. Partnership designated on its partnership return a partnership representative, PR1. After Partnership received a NAP, Partnership submits to the IRS the form described in paragraph (e)(4) of this section requesting the revocation of PR1's designation as partnership representative and designating PR2 as the partnership representative. Sixty days later, Partnership signs and submits a form described in paragraph (e)(4) of this section requesting the revocation of PR2's designation as partnership representative and designating PR3 as the partnership representative. The

IRS accepts the revocation of PR2 and designation of PR3 as valid and effective upon receipt pursuant to paragraph (e)(3) of this section. However, because PR2's revocation was within 90 days of PR1's revocation, the IRS may determine within 90 days of IRS's receipt of PR2's revocation, pursuant to paragraphs (e)(7) and (f)(2) of this section, that there is no designation in effect due to multiple revocations. The IRS may then designate a new partnership representative pursuant to this paragraph (f) without allowing Partnership an opportunity to designate a partnership representative within the 30-day period described in paragraph (f)(1) of this section.

(g) Reliance on forms required by this section. The IRS may rely on any form or other document filed or submitted under this section as evidence of the designation, resignation, or revocation on such form and as evidence of the date on which such form was filed or submitted relating to a designation, resignation, or revocation.

(h) Applicability date—(1) In general. Except as provided in paragraph (h)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017.

(2) Election under §301.9100-22 in effect. This section applies to any partnership taxable years beginning after November 2, 2015 and before January 1, 2018 for which a valid election under §301.9100-22 is in effect.

Par. 3. Section 301.6223-2 is added to read as follows:

§301.6223-2 Binding effect of actions of the partnership and partnership representative.

(a) Binding nature of actions by partnership and final decision in a partnership proceeding. The actions of the partnership and the partnership representative taken under subchapter C of chapter 63 of the Internal Revenue Code (subchapter C of chapter 63) and any final decision in a proceeding brought under subchapter C of chapter 63 with respect to the partnership bind the partnership, all partners of the partnership (including partnership-partners as defined in §301.6241-1(a)(7) that have a valid election under section 6221(b) in effect for any taxable year that ends with or

within the taxable year 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 example, indirect partners as defined in §301.6241-1(a)(4)). For instance, a settlement agreement entered into by the partnership representative on behalf of the partnership, a notice of final partnership adjustment (FPA) with respect to the partnership that is not contested by the partnership, or the final decision of a court with respect to the partnership if the FPA is contested, binds all persons described in the preceding sentence.

(b) Actions by the partnership representative before termination of designation. A termination of the designation of a partnership representative because of a resignation under §301.6223-1(d) or a revocation under §301.6223-1(e), or as a result of a determination by the Internal Revenue Service (IRS) under §301.6223-1(f) that the designation is not in effect, does not affect the validity of any action taken by that partnership representative during the period prior to such termination. For example, if a partnership representative properly designated under §301.6223-1 consented to an extension of the period of limitations on making adjustments under section 6235(b) in accordance with §301.6235-1(d), that extension remains valid even after termination of the designation of that partnership representative.

(c) Actions by the partnership representative upon withdrawal of notice of administrative proceeding. If the IRS issues a notice of administrative proceeding (NAP) under section 6231(a)(1) and subsequently withdraws such NAP pursuant to §301.6231-1(f), any actions taken by a partnership representative (or successor partnership representative after a change to the partnership representative that

occurred after the issuance of the NAP and before the NAP was withdrawn) are binding as described in paragraph (a) of this section even though the NAP has been withdrawn and has no effect for purposes of subchapter C of chapter 63.

(d) Partnership representative has the sole authority to act on behalf of the partnership–(1) In general. The partnership representative has the sole authority to act on behalf of the partnership for all purposes under subchapter C of chapter 63. In the case of an entity partnership representative, the designated individual has the sole authority to act on behalf of the partnership representative and the partnership. Except for a partner that is the partnership representative or the designated individual, no partner, or any other person, may participate in an administrative proceeding without the permission of the IRS. The failure of the partnership representative to follow any state law, partnership agreement, or other document or agreement has no effect on the authority of the partnership representative or the designated individual as described in section 6223, §301.6223-1, and this section. Nothing in this section affects, or otherwise restricts, the ability of a partnership representative to authorize a person to represent the partnership representative, in the partnership representative's capacity as the partnership representative, before the IRS under a valid power of attorney in a proceeding involving the partnership under subchapter C of chapter 63.

(2) Designation provides authority to bind the partnership--(i) Partnership representative. A partnership representative, by virtue of being designated under section 6223 and §301.6223-1, has the authority to bind the partnership for all purposes under subchapter C of chapter 63.

(ii) Designated individual. A partnership that is required to appoint a designated individual described under §301.6223-1(b)(3)(i) acts through such designated individual. By virtue of being appointed as part of the designation of the partnership representative under §301.6223-1, the designated individual has the sole authority to bind the partnership representative and therefore the partnership, its partners, and any other person as described in paragraph (a) of this section for all purposes under subchapter C of chapter 63 so long as the partnership representative designation and designated individual appointment are in effect.

(e) Examples. The following examples illustrate the rules of this section.

Example 1. Partnership designates a partnership representative, PR, on its timely filed partnership return for 2020. PR is a partner in Partnership. The partnership agreement for Partnership includes a clause that requires PR to consult with an identified management group of partners in Partnership before taking any action with respect to an administrative proceeding before the IRS. The IRS initiates an administrative proceeding with respect to Partnership's 2020 taxable year. During the course of the administrative proceeding, PR consents to an extension of the period of limitations on making adjustments under section 6235(b) allowing additional time for the IRS to mail an FPA. PR failed to consult with the management group of partners prior to agreeing to this extension of time. PR's consent provided to the IRS to extend the time period is valid and binding on Partnership because, pursuant to section 6223, PR, as the designated partnership representative, has authority to bind Partnership and all its partners.

Example 2. Partnership designates a partnership representative, PR, on its timely filed partnership return for 2020. PR is not a partner in Partnership. During an administrative proceeding with respect to Partnership's 2020 taxable year, PR agrees to certain partnership adjustments and within 45 days after the issuance of the FPA elects the alternative to payment of the imputed underpayment under section 6226. Certain partners in Partnership challenge the actions taken by PR during the administrative proceeding and the validity of the section 6226 statements furnished to those partners, alleging that PR was never authorized to act on behalf of Partnership under state law or the partnership agreement. Because PR was designated by Partnership as the partnership representative under section 6223 and this section, PR was authorized to act on behalf of Partnership for all purposes under subchapter C of chapter 63, and the IRS may rely on that designation as conclusive evidence of PR's authority to act on behalf of Partnership.

Example 3. Partnership designates an entity partnership representative, EPR, and appoints an individual, A, as the designated individual on its timely filed partnership return for 2020. EPR is a C corporation. A is unaffiliated with EPR and is not an officer, director, or employee of EPR. During an administrative proceeding with respect to Partnership's 2020 taxable year, A, acting for EPR, agrees to an extension of the period of limitations on making adjustments under section 6235(b) from March 15, 2024 to December 31, 2024. The IRS mails an FPA with respect to the 2020 partnership taxable year on December 13, 2024, before expiration of the extended period of limitations on making adjustments as agreed to by EPR, but after the expiration of the unextended period of limitations on making adjustments. Partnership challenges the FPA as untimely, alleging that A was not authorized under state law to act on behalf of EPR and thus the extension agreement was invalid. Because A was appointed by the partnership as the designated individual to act on behalf of EPR, A was authorized to act on behalf of EPR for all purposes under subchapter C of chapter 63, and the IRS may rely on that appointment as conclusive evidence of A's authority to act on behalf of EPR and Partnership.

Example 4. The partnership representative, PR, consents to an extension of the period of limitations on making adjustments under section 6235(b) and §301.6235-1(d) for Partnership for the partnership taxable year. After signing the consent, PR resigns as partnership representative in accordance with §301.6223-1(d). The consent to extend the period of limitations on making adjustments under section 6235(b) remains valid even after PR resigns.

Example 5. Partnership designates a partnership representative who does not make themselves available to meet with the IRS in person in the United States as required by §301.6223-1(b). Although the partnership representative does not have substantial presence in the United States within the meaning of §301.6223-1(b)(2), until a termination occurs under §301.6223-1(d) or (e) or the IRS determines the partnership representative designation is no longer in effect under §301.6223-1(f), the partnership representative designation remains in effect, and Partnership and all its partners are bound by the actions of the partnership representative.

Example 6. Partnership designates PR1 as the partnership representative on its timely filed partnership return for 2020. On September 1, 2022, the IRS sends a NAP for the 2020 taxable year to Partnership and PR, and Partnership revokes PR1's designation and designates PR2 as the partnership representative in accordance with §301.6223-1(e). On November 1, 2023, PR2 consents to an extension of the period of limitations on making adjustments under section 6235(b) and §301.6235(d) for Partnership's 2020 taxable year. On December 1, 2023, the IRS then withdraws the NAP. PR2 remains the partnership representative, and the consent to extend the period of limitations on making adjustments under section 6235(b) remains valid even after the NAP is withdrawn.

(f) Applicability date—(1) In general. Except as provided in paragraph (f)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017.

(2) Election under §301.9100-22 in effect. This section applies to any partnership taxable years beginning after November 2, 2015 and before January 1, 2018 for which a valid election under §301.9100-22 is in effect.

Par. 4. Section 301.9100-22 is added to read as follows:

§301.9100-22 Time, form, and manner of making the election under section 1101(g)(4) of the Bipartisan Budget Act of 2015 for returns filed for partnership taxable years beginning after November 2, 2015 and before January 1, 2018.

(a) Election. Pursuant to section 1101(g)(4) of the Bipartisan Budget Act of 2015, Public Law 114-74 (BBA), a partnership may elect at the time and in such form and manner as described in this section for amendments made by section 1101 of the BBA, except section 6221(b) as added by the BBA, to apply to any return of the partnership filed for an eligible taxable year as defined in paragraph (d) of this section. An election is valid only if made in accordance with this section. Once made, an election may only be revoked with the consent of the Internal Revenue Service (IRS). An election is not valid if it frustrates the purposes of section 1101 of the BBA. A partnership may not request an extension of time under §301.9100-3 for an election described in this section.

(b) Election on notification by the IRS--(1) Time for making the election. Except as described in paragraph (c) of this section, an election under this section must be made within 30 days of the date of notification to a partnership, in writing, that a return

of the partnership for an eligible taxable year has been selected for examination (a notice of selection for examination).

(2) Form and manner of making the election--(i) In general. The partnership makes an election under this section by providing a written statement with the words "Election under Section 1101(g)(4)" written at the top that satisfies the requirements of paragraph (b)(2) of this section to the individual identified in the notice of selection for examination as the IRS contact regarding the examination.

(ii) Statement requirements. A statement making an election under this section must be in writing and be dated and signed by the tax matters partner, as defined under section 6231(a)(7) (prior to amendment by the BBA), and the applicable regulations, or an individual who has the authority to sign the partnership return for the taxable year under section 6063, the regulations thereunder, and applicable forms and instructions. The fact that an individual dates and signs the statement making the election described in this paragraph (b) shall be prima facie evidence that the individual is authorized to make the election on behalf of the partnership. A statement making an election must include--

(A) The partnership's name, taxpayer identification number, and the partnership taxable year for which the election described in this paragraph (b) is being made;

(B) The name, taxpayer identification number, address, and daytime telephone number of the individual who signs the statement;

(C) Language indicating that the partnership is electing application of section 1101(c) of the BBA for the partnership return for the eligible taxable year identified in the notice of selection for examination;

(D) The information required to properly designate the partnership representative as defined by section 6223 as amended by the BBA, which must include the name, taxpayer identification number, address, and daytime telephone number of the partnership representative and any additional information required by applicable regulations, forms and instructions, and other guidance issued by the IRS;

(E) The following representations--

(1) The partnership is not insolvent and does not reasonably anticipate becoming insolvent before resolution of any adjustment with respect to the partnership taxable year for which the election described in this paragraph (b) is being made;

(2) The partnership has not filed, and does not reasonably anticipate filing, voluntarily a petition for relief under title 11 of the United States Code;

(3) The partnership is not subject to, and does not reasonably anticipate becoming subject to, an involuntary petition for relief under title 11 of the United States Code; and

(4) The partnership has sufficient assets, and reasonably anticipates having sufficient assets, to pay a potential imputed underpayment with respect to the partnership taxable year that may be determined under subchapter C of chapter 63 of the Internal Revenue Code as amended by the BBA; and

(F) A representation, signed under penalties of perjury, that the individual signing the statement is duly authorized to make the election described in this paragraph (b) and that, to the best of the individual’s knowledge and belief, all of the information contained in the statement is true, correct, and complete.

(iii) Notice of Administrative Proceeding. Upon receipt of the election described in this paragraph (b), the IRS will promptly mail a notice of administrative proceeding to the partnership and the partnership representative, as required under section 6231(a)(1) as amended by the BBA. Notwithstanding the preceding sentence, the IRS will not mail the notice of administrative proceeding before the date that is 30 days after receipt of the election described in paragraph (b) of this section.

(c) Election for the purpose of filing an administrative adjustment request (AAR) under section 6227 as amended by the BBA--(1) In general. A partnership that has not been issued a notice of selection for examination as described in paragraph (b)(1) of this section may make an election with respect to a partnership return for an eligible taxable year for the purpose of filing an AAR under section 6227 as amended by the BBA. Once an election under this paragraph (c) is made, all of the amendments made by section 1101 of the BBA, except section 6221(b) as added by the BBA, apply with respect to the partnership taxable year for which such election is made.

(2) Time for making the election. No election under this paragraph (c) may be made before January 1, 2018.

(3) Form and manner of making an election. An election under this paragraph (c) must be made in the manner prescribed by the IRS for that purpose in accordance with applicable regulations, forms and instructions, and other guidance issued by the IRS.

(4) Effect of filing an AAR before January 1, 2018. Except in the case of an election made in accordance with paragraph (b) of this section, an AAR filed on behalf of a partnership before January 1, 2018, is deemed for purposes of paragraph (d)(2) of

this section, to be an AAR filed under section 6227(c) (prior to amendment by the BBA) or an amended return of partnership income, as applicable.

(d) Eligible taxable year--(1) In general. For purposes of this section, the term eligible taxable year means any partnership taxable year beginning after November 2, 2015 and before January 1, 2018, except as provided in paragraph (d)(2) of this section.

(2) Exception if AAR or amended return filed or deemed filed. Notwithstanding paragraph (d)(1) of this section, a partnership taxable year is not an eligible taxable year for purposes of this section if for the partnership taxable year--

(i) The tax matters partner has filed an AAR under section 6227(c) (prior to amendment by the BBA),

(ii) The partnership is deemed to have filed an AAR under section 6227(c) (prior to the amendment by the BBA) in accordance with paragraph (c)(4) of this section, or

(iii) An amended return of partnership income has been filed or has been deemed to be filed under paragraph (c)(4) of this section.

(e) Applicability date. These regulations are applicable to returns filed for partnership taxable years beginning after November 2, 2015 and before January 1, 2018.

§301.9100-22T [Removed]

Par. 5. Section 301.9100-22T is removed.

Kirsten Wielobob

Deputy Commissioner for Services and Enforcement.

Approved: July 20, 2018

David J. Kautter

Assistant Secretary of the Treasury (Tax Policy).

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