

CLIENT MEMORANDUM

Early Election Available for New IRS Partnership Tax Audit Rules

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The Internal Revenue Service has issued temporary regulations providing a process for partnerships to elect to become subject to the new IRS partnership tax audit rules. These rules, enacted into law in November 2015, and amended in December 2015, provide for partnership-level tax liability in the event of an IRS audit of the partnership, with several exceptions plus a special pass-through election. The new tax audit rules are generally effective for partnership tax years beginning on January 1, 2018 or later.

The new temporary regulations allow partnerships, if notified of an upcoming IRS audit, to elect early application of the new partnership tax audit rules for any partnership tax year beginning after November 2, 2015 but before January 1, 2018, with certain exceptions.

If a partnership receives an IRS notice that an IRS audit of the partnership is commencing for an eligible tax year, the partnership has 30 days from the date of the notice to elect early application of the new IRS partnership tax audit rules. The election must be made in writing to the IRS audit contact with "Election under Section 1101(g)(4)" written on top. The election must be dated and signed by the tax matters partner or a person authorized to sign the partnership's tax return for the tax year under examination. The temporary regulations also require that the partnership's election statement include certain identifying information of the partnership, the individual signing the election, and the partnership representative, as well as several representations about the partnership's solvency. Partnerships may not request an

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extension to make this election. Upon receipt of a partnership's written election, the IRS will promptly mail the partnership and partnership representative the required notice of administrative proceeding.

After 2017, partnerships that have not received a notice that an IRS audit of the partnership is commencing may elect application of the new tax audit rules to pre-2018 tax years by filing an administrative adjustment request under certain applicable IRS procedures. This would result in all of the new IRS partnership tax audit rules applying, except that the opt-out election for partnerships with 100 or fewer partners would not be available.

If you have any questions regarding this memorandum, please contact Joseph Riley (212-728-8715; jriley@willkie.com) or the Willkie attorney with whom you regularly work.

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