



February 21, 2019

The Honorable Charles P. Rettig  
Internal Revenue Service  
Attn: CC:PA:LPD:PR (Notice 2019-06) Room 5203  
P.O. Box 7604  
Ben Franklin Station  
Washington, D.C. 20044

RE: IRS Notice 2019-06, Comments Regarding Guidance on Special Enforcement Matters Under the Centralized Partnership Audit Regime

Dear Commissioner Rettig:

The Texas Society of Certified Public Accountants (TXCPA) is a nonprofit, voluntary professional organization representing 28,000 members. One of the expressed goals of the TXCPA is to speak on behalf of its members when such action is in the best interest of its constituency and serves the cause of the CPAs of Texas, as well as the public interest. TXCPA has established a Federal Tax Policy Committee to represent those interests on tax-related matters. The committee has been authorized by the TXCPA Board of Directors to submit comments on such matters of interest to the committee membership. The views expressed herein have not been approved by the Board of Directors or Executive Board and, therefore, should not be construed as representing the views or policies of the TXCPA.

Notice 2019-06 indicates that proposed regulations will count the underlying shareholders in a qualified subchapter S subsidiary (QSub) in determining whether the partnership has more than 100 partners for purposes of electing out of the centralized partnership audit regime.

The purpose of the QSub election is to enable an S corporation to have the benefit of a corporate shareholder despite the fact that an S corporation is generally not permitted to have a corporate shareholder. To accomplish this, Section 1361(b)(3)(B) permits an S corporation to treat a wholly owned subsidiary as a QSub. Under the election, the parent of a QSub, an S corporation, is deemed to directly own all of the assets, liabilities, items of income, deductions and credits of its QSub subsidiaries. When the QSub election is made, the subsidiary entity is regarded as liquidated pursuant to Section 1361(b)(3)(A). Accordingly, the shareholders of the QSub are not relevant; the shareholders of the parent S corporation should be disclosed for purposes of counting partners for opting out of the partnership audit regime.

The proposed "relief provisions" described in Section 2 of Notice 2019-06 incorrectly state:

"Because a QSub is not an S corporation, it is a C corporation (as defined in Section 1361(a)(2). Because a QSub is a C corporation, it is an eligible partner under Section 6221(b)."

This is an erroneous premise. Under the statute, when a corporation makes the QSub election, it is treated under Section 1361(b)(3)(A) as if it were liquidated into the "parent" S corporation and, accordingly, it no longer exists as a separate taxable entity for federal tax purposes (even though for state law purposes, such as limited liability, it is still in existence) and, therefore, is not a partner under Section 6221(b). For federal income tax purposes, it is the parent S corporation that is the partner. This is an important distinction for S corporations that goes beyond the question of whether a partnership has more than 100 partners. Therefore, it is essential that the notice be republished to correct this error and that the error not be carried into the proposed or final regulations when they are issued. It is the parent S corporation that should provide shareholder information to the partnership under Section 6221(b)(2) of the Code – not the QSub.

Thank you for considering our comments. We would be pleased to discuss them further if you or your staff members believe it would be helpful. Please feel free to contact me at 512-542-9300 or cmondrik@mondriklaw.com, Kenneth Horwitz at 972-419-8383 or kmh@gpm-law.com or TXCPA Staff Liaison Patty Wyatt at 817-656-5100 or pwyatt@tscpa.net.

Sincerely,



Christina A. Mondrik, JD, CPA  
Chair, Federal Tax Policy Committee  
Texas Society of Certified Public Accountants

cc: The Honorable David J. Kautter, Assistant Secretary Treasury (Tax Policy)  
The Honorable Steven T. Mnuchin, Secretary of the Treasury  
Jennifer M. Black, Office of the Associate Chief Counsel (Procedure and Administration)  
Nina E. Olson, National Taxpayer Advocate