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From:

Sent: Friday, January 09, 2009 8:43:06 AM

To:

Cc:

Subject: RE: TEFRA questions

An IRA is a trust (see I.R.C. 408) and its custodian is a trustee for purposes of federal law. Thus, it is a "person" as defined under I.R.C. 7701(a)(1) and a "United States Person" under I.R.C. 7701(a)(30)(E). Thus, an IRA may be designated as Tax Matters Partner under Treas. Reg. Section 301.6231(a)(7)-1(b)(2). It would execute its TMP function through its trustee. Even if the IRA was not a United States person, the restriction under the forgoing regulation applies only if there is a United States person who is eligible. Under your facts, there are no non-IRA partners, so the restriction in question (limiting designations to U.S. persons) does not apply in any event.

I agree that the partnership has probably validly designated the TMP on the partnership return if the person signing the return is a "member-manager" as defined under Treas. Reg. 301.6231(a)(7)-2(b)(3) or is authorized by one of more member-managers to sign the return pursuant to the LLC operating agreement.