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From: [REDACTED]
Sent: Thursday, April 11, 2024 1:13:59 PM
To: [REDACTED]
Cc: [REDACTED]
Bcc:
Subject: RE: Substantial Presence Test

Hi Annie,

We previously provided the below e-mail advice with regard to determining whether to treat the designation by a partnership (“PRS”) of a partnership representative (“PR”) for a taxable year (“TY”) as in effect, and, if it is, identifying the address to be used to mail the copy of the notice of administrative proceeding (“NAP”) for PR. You followed up with some additional information and a few additional questions.

Facts

We understand that (1) you have been in communication with PR through a representative duly authorized to represent PR in connection with PR’s role as PRS (“POA”), (2) you previously mailed the copy of the NAP for PR to the PRS street address in the United States (“U.S. address”) provided by PRS for PR in connection with the designation of PR as PRS partnership representative, and it was not returned as undeliverable, and (3) neither PR nor POA has requested that a copy of the NAP sent to PR be sent to PR’s address in the foreign country (“FC”).

Issues

You have asked:

1. Given that the original Letter 5893-A was sent to PRS’s U.S. address, should a copy of the Letter 5893-A be sent to the address in FC that is reflected on PR’s most recently filed and properly processed Federal tax return and accordingly in the Service’s records as PR’s last known address?
2. Following up on the advice in response to Question 2 in the previous advice, how does a partnership subject to the centralized partnership audit regime enacted by the Bipartisan Budget Act of 2015, Public Law 114-74 (BBA), or a partnership representative of such a partnership, currently give a clear and concise notification of a different address?

Summary of Conclusions

Based on the analysis below:

1. The original Letter 5893-A would have been sufficient if sent to the address in FC that is reflected on PR’s most recently filed and properly processed Federal tax return and

accordingly in the Service's records as PR's last known address. Although the mailing of the original Letter 5893-A to the U.S. address provided for PR may have been sufficient, we recommend, out of an abundance of caution, confirming with PR the appropriate address to use for correspondence with the PR.

2. The Form 8822 or Form 8822-A, as applicable, may be used by PR and/or PRS to give clear and concise notification of a different address.

Analysis

1. *Given that the original Letter 5893-A was sent to PRS's U.S. address, should a copy of the Letter 5893-A be sent to the address in FC that is reflected on PR's most recently filed and properly processed Federal tax return and accordingly in the Service's records as PR's last known address?*

The previous advice answered the question, "what address should be used to mail the copy of the NAP for the TY to PR?" The advice referred to mailing the "the copy of the NAP for TY to PR" to distinguish it from the copy of the NAP required to be sent to PRS. The previous advice indicated that, under Treas. Reg. §301.6231-1(c), the NAP would be sufficient if mailed to the address in FC that is reflected on PR's most recently filed and properly processed Federal tax return and accordingly in the Service's records as PR's last known address. We understand that the Letter 5893 is used for NAPs sent to partnerships and the Letter 5893-A is used for NAPs to partnership representatives. Accordingly, the reference to mailing the "copy of the NAP ... to PR" was to mailing the original Letter 5893-A to PR's last known address, not a second copy. Based on the facts as we understood them in the previous advice, there was no need for a second copy of the Letter 5893-A to be mailed.

We now understand, however, that the original Letter 5893-A was mailed to PRS's U.S. address, rather than PR's last known address. Treas. Reg. §301.6231-1(c) only indicates that the Letter 5893-A would be sufficient if mailed to PR's last known address and does not indicate that it would not be sufficient if mailed to the U.S. address provided by PRS for PR in connection with the designation of PR as PRS partnership representative. Accordingly, the mailing of the original Letter 5893-A to the U.S. address provided for PR may have been sufficient. In fact, we understand that the original Letter 5893-A was not returned as undeliverable and that you have been in contact with PR, and PR has not provided an alternative address for the purpose of mailing a copy of the Letter 5893-A. Accordingly, the procedures in IRM 4.31.9.8.1(3) for mailing a copy to an address of convenience do not clearly apply. Nevertheless, we recommend, out of an abundance of caution, that you contact PR and request that PR confirm the appropriate address to use for correspondence. If PR were to provide written confirmation that PRS's U.S. address should be used for PRS-related correspondence, using such address would be sufficient, and no second copy of the Letter 5893-A would need to be mailed. If PR were to provide an address of convenience, it could be used to mail a second copy of the Letter 5893-A and future correspondence to PR.

2. *Following up on the advice in response to Question 2 in the previous advice, how does a partnership subject to the centralized partnership audit regime enacted by the Bipartisan Budget Act of 2015, Public Law 114-74 (BBA), or a partnership representative of such a partnership currently give a clear and concise notification of a different address?*

Treas. Reg. §301.6212-2(a) refers to procedures setting forth what constitutes clear and concise notification of a different address. Section 5.04 of Revenue Procedure 2010-16 sets forth procedures and indicates that Form 8822 can be used to provide clear and concise notification of a change of address. Although section 6.01 indicates that it does not apply to the notice requirements under sections 6221 through 6234, it is clear from the publication date of the revenue procedure and the scope of the reference that its limitation relates to those sections as in effect before amendment by BBA. The instructions to Form 8822, Change of Address, indicate that it can be used to change a home mailing address. The instructions to Form 8822-B, Change of Address or Responsible Party – Business, provide that it can be used to change a business mailing address, business location, or the identity of your responsible party. Accordingly, an individual partnership representative, like PR, could file Form 8822 to provide clear and concise notification of a different address from their last known address. And a partnership, like PRS, could file Form 8822-B to provide clear and concise notification of an address for the partnership different from their last known address.

