Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:HMT:WAS:POSTF-109024-02
WABaker

date: 2/19/02

to: Team Manager, Team 1134 (Financial Services), Washington, D.C.

from: Associate Area Counsel (Heavy Manufacturing and Transportation), Washington, D.C.

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subject: **Power of Attorney; signature of taxpayer**
Taxpayer: [redacted], L.P.
TIN: [redacted]
Address: [redacted]

Years: Calendar Years [redacted] and [redacted]

This is in response to your request for advice regarding the subject taxpayer's signature on a Power of Attorney and Declaration of Representative (Form 2448 (Rev. 1-2002)) appointing representatives as attorneys-in-fact.

FACTS:

[redacted] L.P. is a [redacted] limited partnership whose U.S. Partnership Return of Income (Form 1065) for both calendar year [redacted] and [redacted] is currently under examination. Three individuals associated with the accounting firm of [redacted] LLP propose to represent [redacted], L.P. before the Internal Revenue Service. Each of these individuals is either an attorney, certified public accountant, or enrolled agent.

[redacted], L.P., on its [redacted] and [redacted] partnership income tax returns, designated [redacted] LLC, a general partner, as its tax matters partner. On the [redacted] return, as a result of a typographical error, [redacted] LLC was identified as [redacted] LLC.

[redacted] LLC is a Delaware limited liability company. The Limited Liability Company Agreement of [redacted]

[redacted] LLC, dated [redacted], provides at Article [redacted]:

[redacted]

Article [redacted]
,

[redacted] L.L.C. is a Delaware limited liability company. The Limited Liability Company Agreement of [redacted] L.L.C., dated [redacted], provides at paragraph numbered [redacted]:

, ,

[redacted]

[redacted]

Paragraph numbered [redacted] of the agreement provides that the initial managers shall be [redacted] and [redacted].

The individuals associated with [redacted] LLP propose to represent [redacted], L.P. before the Internal Revenue Service by providing you with a power of attorney executed on Form 2848 (Rev. 1-2002) signed by [redacted].

DISCUSSION:

I.R.C. § 6231(a)(7) provides a definition of tax matter partner, which includes among others: "the general partner designated as the tax matters partner as provided in regulations." Treas. Reg. § 301.6231(a)(7)-1(c) provides that "[t]he partnership may designate a tax matters partner for a partnership taxable year on the partnership return for that taxable year in accordance with the instructions for that form." Therefore, [redacted] LLC was properly designated as tax matter partner for [redacted] and [redacted].

Under Delaware law, a limited liability company agreement "means any agreement, written or oral, of the member or members as to the affairs of a limited liability company and the conduct of its business." 6 Del. C. § 18-101(7) (2001). The definition of manager "means a person who is named as a manager of a limited liability company in, or designated as a manager of a limited liability company pursuant to, a limited liability company agreement or similar instrument under which the limited liability company is formed." 6 Del. C. § 18-101(10) (2001).

Management of a limited liability company is addressed at 6 Del. C. § 18-402 (2001), which provides:

> Unless otherwise provided in a limited liability company agreement, the management of a limited liability company shall be vested in its members in proportion to the then current percentage or other interest of members in the profits of the limited liability company owned by all of the members, the decision of members owning more than [redacted] percent of said percentage or other interest in the profits controlling; provided however, that if a limited

> liability company agreement provides for the management, in whole or in part, of a limited liability company by a manager, the management of the limited liability company, to the extent so provided, shall be vested in the manager who shall be chosen in the manner provided in the limited liability company agreement. The manager shall also hold the offices and have the responsibilities accorded to the manager by or in the manner provided in a limited liability company agreement. Subject to § 18-602 of this title, a manager shall cease to be a manager as provided in a limited liability company agreement. A limited liability company may have more than 1 manager. Unless otherwise provided in a limited liability company agreement, each member and manager has authority to bind the limited liability company.

The limited liability agreement of [redacted] LLC provides for management by an oversight committee. The limited liability agreement of [redacted] L.L.C. provides for managers.

Treas. Reg. § 601.503(b)(1) provides that "[a] properly completed Form 2848 satisfies the requirements for both a power of attorney (as described in § 601.503(a)) and a declaration of representative (as described in § 601.502(c)). Treas. Reg. § 601.503(c) provides in part that "Internal Revenue Service officials may require a taxpayer (or such individual(s) required or authorized to sign on behalf of a taxpayer) to submit appropriate identification or evidence of authority."

CONCLUSION:

Because the representative's authority is not readily apparent from the documents provided, we recommend that you require [redacted] LLC provide you, in accordance with article [redacted] of its limited liability company agreement, a resolution from its board of directors specifically authorizing [redacted] L.L.C. to execute the Form 2848. You may rely upon the limited liability company agreement for [redacted] L.L.C. as authorizing [redacted] to sign the Form 2848 for [redacted] L.L.C.

After receiving the requisite resolution from [redacted] LLC, we suggest you use the following form for the signature on the Form 2848:

[redacted], L.P.
By: [redacted] LLC
Tax Matters Partner
By: [redacted] L.L.C.

[redacted]
Manager

If you have a question, please contact Special Litigation Assistant Wilton A. Baker. His telephone number is (202) 634-5403 ext. 269.

CAROL E. SCHULTZE
Associate Area Counsel