

Notice 2001-5

This notice provides guidance to partnerships regarding the need to file a final short-year partnership tax return following a partnership termination under §708(b)(1)(B) of the Internal Revenue Code. Questions have arisen regarding whether a terminated partnership files a final short-year tax return given that the new partnership resulting from the termination will continue to use the employer identification number of the terminated partnership.

A partnership terminates for tax purposes under § 708(b)(1)(B) as a result of the sale or exchange of 50 percent or more of the total interest in partnership capital and profits within a 12-month period. The regulations under § 708(b) were modified in 1997 to provide that following the termination of a partnership, the terminated partnership is deemed to contribute all its assets and liabilities to a new partnership in exchange for an interest in the new partnership; and, immediately thereafter, the terminated partnership distributes interests in the new partnership to the purchasing partner and the other remaining partners in proportion to their respective interests in the terminated partnership in liquidation of the terminated partnership.

Section 301.6109-1(d)(2)(iii) of the Procedure and Administration Regulations provides that the new partnership that is formed as a result of the termination of a partnership under § 708(b)(1)(B) will retain the employer identification number of the terminated partnership.

Section 1.706-1(c)(1) of the Income Tax Regulations provides that in the case of a termination, the partnership taxable year closes for all partners as of the date of termination. Thus, the taxable year of the partnership terminates with the termination of the partnership under § 708(b)(1)(B). Under § 6031(a) every partnership that is required to file a return must file a return of partnership income for each taxable year of the partnership.

Under § 443(a)(2), a return is required to be made for a period of less than 12 months if the taxpayer is in existence for

only part of what would otherwise be its taxable year.

Accordingly, a partnership that terminates under § 708(b)(1)(B) is required to file a short-year final return for the taxable year ending with the date of its termination. The new partnership is required to file a return for its taxable year beginning after the date of termination of the terminated partnership.

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