

ARTICLE I
TAX MATTERS¹

Section 1.1 Definitions. For purposes of this Article ____, the following terms shall have the following meanings:²

- a. Affected Tax Partner. With respect to any Tax Item, a Tax Partner other than a Return Year Partner who may be affected by any Adjustment.³
- b. Adjustment. For any Tax Year, Adjustment shall mean any [final] modification of the reporting of the Tax Items of the Company for that Tax Year.⁴
- c. Adjustment Year. For any Centralized Year means “adjustment year” of the Company as defined in Code § 6225 of the Centralized Partnership Audit Regime.⁵
- d. Centralized Partnership Audit Regime. Centralized Partnership Audit Regime shall mean the centralized partnership audit regime under Subchapter C of Chapter 63 of the Code (Code §§ 6221 et. seq. as originally enacted by the Bipartisan Budget Act of 2015 (P.L. 114-74)), and as may be amended, and including any Regulations or other administrative guidance promulgated thereunder.⁶
- e. Centralized Year. Centralized Year shall mean a Tax Year for which the Company is subject to the Centralized Partnership Audit Regime.
- f. Partnership Tax Return. Partnership Tax Return shall mean the Company’s federal income return for a Return Year.
- g. Pre-TEFRA Partnership Audit Regime. Pre-TEFRA Partnership Audit Regime shall mean the separate partnership audit regime under Subchapter B of Chapter 63 of the Code (Code §§ 6211 et. seq.) which applies to all partnership audits not subject to the Centralized Partnership Audit Regime or the TEFRA Partnership Audit Regime.⁷
- h. Pre-TEFRA Year. Pre-TEFRA Year shall mean a Tax Year for which the Company is subject to the Pre-TEFRA Partnership Audit Regime.
- i. Return Year. Return Year shall mean the Tax Year to which the Tax Item or tax return relates, including, the “reviewed year” as described in the Centralized Partnership Audit Regime.⁸
- j. Tax. Tax shall mean any federal, state, or local tax or fee that is required to be reported or paid by the Company or any Tax Partner to a governmental authority with respect to the conduct of the business of the Company.⁹
- k. Tax Agent. For any Tax Year, Tax Agent shall mean the Person having the power to bind the Company with respect to Tax Items for that Tax Year. The Tax Agent shall include the “tax matters partner” for TEFRA Years, the “partnership representative” (and, if the partnership representative is not an individual, the designated individual¹⁰) for Centralized

Years, and the Person signing the Partnership Tax Return or any Tax election made by the Company.¹¹

l. Tax Items. For any Tax Year, Tax Items shall mean, all federal, state, and local tax and fee items and liabilities of the Company and any related to the Company, including, but not limited to, all “partnership items” as defined in the Code and Regulations and items of income, gain, loss, deduction, or credit of the Company for a partnership taxable year and any partner’s distributive share thereof.¹²

m. Tax Partner. Tax Partner shall mean any Person (regardless of whether a Member) who is or has been treated as a partner in the Company for [federal] tax purposes.¹³

i. Return Year Tax Partner. For each Tax Year, a Return Year Tax Partner who is or was a Tax Partner at any time during the Return Year.¹⁴

ii. Affected Year Tax Partner. For each Adjusted Tax Year, an Affected Year Tax Partner is a Tax Partner who is not a Return Year Tax Partner, but whose tax liability may be altered by an Adjustment.¹⁵

n. Tax Year. A taxable year (as defined in the Code) of the Company.

o. TDM. TDM shall mean the Tax Decision-Maker as described in Section Section 1.2 below.

p. TEFRA Partnership Audit Regime. The TEFRA Partnership Audit Regime shall mean Subchapter C of Chapter 63 of the Code (Code §§ 6221 et. seq., as originally enacted in the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. No. 97–248)) as amended until repealed by the Centralized Partnership Audit Regime.¹⁶

q. TEFRA Year. A Tax Year in with the Company is subject to the TEFRA Partnership Audit Regime.

Section 1.2 Tax Decision Maker (“TDM”).¹⁷

a. Appointment, Removal, Resignation. For the first Tax Year of the Company, the TDM shall be _____.¹⁸ [The TDM] [any member of the TDM] shall serve [for a term of _____][until the [TDM][member of the TDM] resigns or is removed and a successor is appointed]. The TDM [any member of the TDM] may be removed at any time, [for][with or without] cause by _____. The TDM [any member of the TDM] may resign upon 30 days notice. Any vacancy in the [TDM] [the membership of the TDM] may be filled by _____. In the event of an unfilled vacancy in the position of TDM [the Tax Agent shall not take actions on behalf of the Partnership until such vacancy is filled][the Tax Agent shall exercise the authority for which section Section 1.2b) provides].¹⁹

Also available as part of the eCourse

[Drafting Partnership and Company Agreements in Light of the IRS' new Partnership Audit Rules](#)

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"New Partnership Audit Rules—Update and Drafting Considerations"