

# IVEN R. TAUB

ATTORNEY AT LAW

Of Counsel  
Timothy W. Lewis <sup>Δ</sup>  
Schwartzman Garelik  
Walker & Troy, P.C. <sup>ΔΔ</sup>

355 LEXINGTON AVENUE  
20<sup>TH</sup> FLOOR  
NEW YORK, NEW YORK 10017

TEL: (212) 286-7700  
(212) 686-6866

FAX: (212) 481-2488  
E-mail: [IVENESQ@aol.com](mailto:IVENESQ@aol.com)  
Website: [www.ivenesq.com](http://www.ivenesq.com)

**WESTCHESTER OFFICE**  
550 MAMARONECK AVENUE  
SUITE 401  
HARRISON, NEW YORK 10528

TEL: (914) 835-7100

FAX: (914) 835-7466

**BY APPOINTMENT ONLY**

<sup>Δ</sup>Member Admitted in  
New York and Massachusetts  
<sup>ΔΔ</sup>Members Admitted in  
New York and New Jersey

September 2016

**TO: CLIENTS AND THEIR ADVISORS**

**RE: A NEW LANDSCAPE FOR IRS PARTNERSHIP AUDITS AND DUE DILIGENCE**

---

In November 2015, Congress repealed the existing framework for audits of partnership (or LLC) tax returns, commonly referred to as “TEFRA”. Briefly, those provisions enabled the IRS to conduct an audit of a partnership’s income tax return (Form 1065) and enter into an agreement with the designated “tax matters partner” of the partnership as to what changes should be made. The IRS would then send a tax bill to each partner for the additional tax determined to be due as a result of the partner’s share of the partnership changes, which would then be incorporated into the partner’s previously filed income tax return(s).

The new statutes (effective in 2018 or earlier if elected by a partnership), make several changes that have a significant impact on partners and partnerships going forward. Certain small partnerships can elect out of the new regime.

- A new “Partnership Representative”, who need not be a partner, has the authority to deal with the IRS. Only the partnership and the Partnership Representative can receive notice of IRS proceedings.
- When changes are made or agreed upon with the IRS, the default outcome is that the partnership itself is billed for the additional income tax due, using the highest income tax rate. If all partners cooperate within prescribed time periods, they can elect to amend their own income tax returns and pay the tax at the partner level using the actual tax rate or tax-exempt status of each partner.
- There is a timing difference because the year being audited is likely several years before the year in which the audit concludes and any additional tax would be billed to the partnership in the future year. Thus, a current partner could bear the tax cost of the audit changes for a year in which he or she was not a partner and received no income from the partnership.
- Various defenses, such as reasonable cause for the non-imposition of penalties, will now be evaluated at the partnership level and the determination made at that level cannot easily be challenged by a partner who feels his or her circumstances are different.

The implications of this new law are quite broad. For example, a prospective purchaser of a partnership interest will now be economically concerned with possible changes to prior year partnership income tax returns. Partners will want to contractually require notices, reimbursement, indemnification and procedural consent rights among themselves. Any new partnership agreement should be drafted to incorporate the new provisions and any existing partnership should have its agreement reviewed.

**Our office is available to assist you or your clients in exploring domestic and foreign tax dispute resolution and tax planning matters as well as our other areas of specialization, including retirement planning issues; sophisticated gift and estate tax planning and administration opportunities including family limited partnerships, qualified personal residence trusts, intentionally defective grantor trusts and charitable scenarios, which will assist in the preservation of wealth for future generations; business; and employment law representation and real estate transactions**