Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:RFPH:STP:[redacted]:POSTF-157527-01
[redacted]

date: January 25, 2002

to: [redacted], LMSB Team Manager, E:[redacted] Stop [redacted]
[redacted], [redacted]
Attn: Revenue Agent [redacted]

from: Associate Area Counsel
(Large and Mid-Size Business: Area 3)

subject: [redacted], L.P.

As you requested, we have considered the proper format for a signature block identifying the Tax Matters Partner of [redacted], L.P. ([redacted]) for the year ended December 31, [redacted], and subsequent years. This memorandum should not be cited as precedent. In order to conduct the examination of [redacted] for these years, [redacted] intends to execute a Power of Attorney appointing a representative. As discussed below, in our opinion [redacted], LLC ([redacted]), the named Tax Matters Partner of [redacted], is properly classified as a "disregarded entity." We recommend that you style the signature block as follows:

> [redacted], as Manager of [redacted], LLC (a disregarded entity owned by [redacted], [redacted], LLC and Tax Matters Partner of [redacted], L.P.), and as Tax Matters Partner of [redacted], [redacted], LLC.

For the years in question, [redacted] was owned by [redacted] partners. [redacted], the sole general partner, owned an [redacted]% interest. [redacted] is a [redacted] Limited Liability Company. The other [redacted] partners of [redacted], [redacted], [redacted], LLC ([redacted]) and [redacted], LLC ([redacted]), are also [redacted] Limited Liability Companies. [redacted] was designated as the TMP of [redacted] on [redacted] tax return for the year in question.

[redacted]% of the units of ownership of [redacted] are owned by [redacted]. Accordingly, [redacted] is the only Member of [redacted]. [redacted] Amended and Restated Operating Agreement incongruously provides that [redacted] (who is not a Member) shall be the Tax Matters Member of [redacted], and that [redacted] intends to be taxed as a Partnership. Additionally, [redacted] filed a Form 1065 which reflected, on Schedule K-1, that [redacted] owned [redacted]% of the profits, loss and capital of [redacted]. That return did not include any additional

Schedules K-1. However, as [redacted] has only one owner, it clearly cannot elect to be taxed as a partnership; Treas. Reg. § 301.7701-2(c)(1) defines a partnership as an entity that is not a corporation and has at least two members. Under the "check-the-box" entity classification rules, [redacted] could elect to be taxed as either a disregarded entity or as a corporation; absent an election, [redacted] would default to treatment as a disregarded entity. Treas. Reg. § 301.7701-3(b)(1). [redacted] return preparer has alleged that no Form 8832, electing corporate status, was filed. [1] Accordingly, [redacted] is a disregarded entity.

(b)(5)(AWP), (b)(7)a

[redacted] Amended and Restated Operating Agreement provides that [redacted] business affairs shall be conducted by its managers. [redacted], [redacted] and [redacted] are named as the managers. Section [redacted] provides that "[redacted]." The grant of authority includes the authority to perform all acts necessary or appropriate to conduct [redacted] business affairs. However, as none of these individuals is a "member-manager" of [redacted], they cannot be the TMP of [redacted]. Treas. Reg. 301§ 6231(a)(7)-2.

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[1]If [redacted] had elected to be taxed as a corporation, [redacted] as the TMP of [redacted] could have executed a Power of Attorney or other documents through those individuals authorized to conduct its business.

Depending on the resolution of this issue, either [redacted] or [redacted] is the TMP of [redacted]. [redacted] is owned by [redacted] ([redacted]%), [redacted] ([redacted]%) and the [redacted] ([redacted]%). [redacted] Amended and Restated Operating Agreement provides that it will elect to be treated as a partnership, and that its TMP is [redacted]. [redacted] thus has the legal authority to represent both [redacted] and [redacted]. As one of these entities is the TMP of [redacted], and [redacted] is authorized to act on behalf of both entities, in our opinion [redacted] can execute a Power of Attorney with regard to [redacted]. As [redacted] has the capacity to act on behalf of both [redacted] and [redacted], we have structured the signature block so that he is signing on behalf of both entities. In our opinion, a power of attorney executed in this format is sufficient to allow the Service to communicate with the designated representative. As execution of a POA is necessary to begin the examination, we suggest that you discuss this matter with the appropriate individuals as soon as possible. However, as we stated, we intend to request review of this opinion from our Headquarters.

REID M. HUEY
Associate Area Counsel
Large an Mid-Size Business

By: _____
ROBERT J. BURBANK
Senior Attorney (LMSB)