

October 31, 2016

Mr. Thomas Barthold

Chief of Staff

Joint Committee on Taxation

502 Ford House Office Building

Washington, D.C. 20515

Dear Mr. Barthold:

This letter is intended to communicate to you as Chief of Staff of the Joint Committee on Taxation my unhappiness over the recent extended debate with your staff over the repeal of the “small partnership” exception, clearly authorized by I.R.C. § 6231(a)(1)(B) of the Internal Revenue Code and the unwillingness to admit that such a provision ever existed. Clearly, for all of those who can read, and the evidence raises the question of whether some of your staff can read, it is absolutely crystal clear that the “small partnership” exception *does exist and has existed since 1982*. The copy of the article that ran in Tax Notes, volume 152, No. 7, dated August 15, 2016, a copy of which is included herewith, explains in detail that the concept does exist and has existed for more than 34 years.

My service with the federal government has been fairly extensive. In 1967 I was asked by the Department of the Treasury to serve on a task force to provide insight into what was causing “tax sheltering” particularly in the agricultural sector. Ironically, that was during the early stages of interest by Treasury and IRS about the tax sheltering issue. The result was a “get tough” policy by the Congress with respect to partnership tax law, giving rise directly to the enactment of the “small partnership” exception as an amendment to the Tax Equity and Fiscal Responsibility Act of 1982 by virtue of efforts by a small group of Senators and Members of the House of Representatives who believed that the amendments in TEFRA would make life difficult for farmers, ranchers and other small businesses in complying with the new rules. Also, I served a one-year term as a member of

the Commissioner's (the Commissioner of Internal Revenue) Advisory Board in 1979-1980. In 1987, I was appointed by the Congress to serve on the Advisory Board of the Office of Technology Assessment and was elected president of that group in 1993-94. In 2002, I was selected by Congressional action to serve on the Commission on Payment Limitations for the agricultural sector which acted during 2003. I had also served on the Advisory Committee on Agricultural Biotechnology (ACAB) in 2002-2003 for the United States Department of Agriculture. These are some of the occasions for involvement at the federal level.

Moreover, I am the author of a 15-volume treatise, Agricultural Law, published by LexisNexis (formerly Matthew Bender) and a two volume treatise, Farm Income Tax Manual, also published by LexisNexis.

To put it bluntly, your staff has misrepresented grossly the "small partnership" exception which is used widely and has been for 34 years. The statute is clear (I.R.C. §6231(a)(1)(B)(i)) which states "The term 'partnership' *shall not include* any partnership having 10 or fewer partners each of whom is an individual (other than a nonresident alien), a C corporation, or an estate of a deceased partner." Notice, such a "small partnership" *is not a partnership*. That is the key passage in this controversy. Your staff maintains, incorrectly, that a "small partnership" is a partnership which is absolutely incorrect.

There is no defense, no matter how high the office in the federal government, to continually tell lies about a relevant issue. That is precisely what your office has continually done since April 7, 2016 and, apparently long before that. The level of arrogance and reckless disregard for truth and veracity is stunning. No one is above the law and accountability.

My request to you is to take the necessary steps to assure the public that your office is not above the law and the office for which you serve as Chief of Staff now agrees that the "small partnership" exception exists and has existed since 1982. And further, that your office will take the necessary steps to see that the re-enactment before 2018 of I.R.C. § 6231(a)(1)(B) is placed before the Congress for a vote, that your office will not take the position that "there is not such a thing" as the "small partnership" exception and that the communications by your office will be even handed.

Sincerely yours,

Neil E. Harl