

4. 915 Broadway Associates was the tax matters partner (“TMP”) for both Plaintiffs.
5. Earle Altman, not himself a party in this case, is a resident of the State of New York with a business address of c/o ABS Partners, 200 Park Avenue South, 10th Floor, New York City, New York 10003.
6. Earle Altman is a general partner, notice partner, and the tax matters partner (“TMP”) for 915 Broadway Associates, and therefore the authorized representative of the general partner and tax matters partner of both Plaintiffs.
7. Defendant Internal Revenue Service (“IRS”) is a bureau of the United States Department of the Treasury, an executive department of the U.S. government, with a principal place of business at 1111 Constitution Avenue, N.W., Washington, D.C. 20224.
8. Defendant is in possession of the documents Plaintiffs seek.

Jurisdiction and Venue

9. This Court has jurisdiction under 28 U.S.C. §1331, 5 U.S.C. §552(a)(4)(B), and 5 U.S.C. §702.
10. Venue is proper in this Court pursuant to 5 U.S.C. §552(a)(4)(B).

The Freedom of Information Act

11. FOIA provides public access to the records of federal government agencies upon request, absent a pertinent statutory exemption. 5 U.S.C. §552(a)(3).

12. FOIA also provides that an agency must determine whether to release records within 20 business days after receiving a request, must promptly notify the requester of its decision and, if it decides to release the records, it must release them promptly. 5 U.S.C. §552(a)(6)(A)(i) and 5 U.S.C. §552(a)(6)(C)(i).

13. When an agency fails to produce records, this Court has jurisdiction to review the agency's failure and to order the production of improperly withheld documents. 5 U.S.C. §552(a)(4)(B).

14.

Statement of Facts

15. In 2004, Plaintiffs deeded a conservation easement on their building at 915 Broadway, New York City, New York, to the National Architectural Trust.

16. The National Architectural Trust, now known as the Trust for Architectural Easements, is a qualified easement holding organization.

17. Pursuant to 26 U.S.C. §170(h), both Plaintiffs claimed a charitable contribution deduction for the easement donation on their 2004 Partnership returns (Forms 1065).

18. Defendant disallowed the charitable contribution deductions taken by Plaintiffs with respect to the conservation easement as a result of a Tax Equity and Fiscal Responsibility Act ("TEFRA") partnership-level examination.

19. Defendant's determinations were embodied in two separate Notices of Final Partnership Administrative Adjustment ("FPAAs"), dated May 13 and May 23, 2013, respectively.

20. On July 30, 2013, Plaintiffs timely filed petitions in United States Tax Court alleging that Defendant's adjustments: were time-barred, incorrectly analyzed the conservation donations' compliance with the applicable statute and regulations, improperly questioned the value of the donations, and incorrectly imposed penalties under 26 U.S.C. §6662.

21. The two cases were subsequently consolidated.

22. In the Tax Court case, Defendant alleges, among other things, that the deductions should be disallowed because the conservation deed of easement was not recorded until 2005.

23. On December 23, 2014, Plaintiffs filed protective claims for their 2005 tax years to avail themselves of the mitigation provisions contained in 26 U.S.C. §1311.

24. On July 30, 2014, Plaintiffs mailed a FOIA request, through their designated representative pursuant to an IRS Power of Attorney (IRS Form 2848), covering tax years 2004 and 2005, to Defendant. See Exhibit A. The FOIA request was received by Defendant on August 15, 2014. See Exhibit B.

25. Defendant, without claiming a specific exemption, failed to respond to Plaintiffs' FOIA request within the 20-day statutory period.

26. Instead, Defendant requested several extensions of the deadline to respond.

27. For approximately nine months, Defendant repeatedly failed to meet its self-imposed extended deadlines. See Exhibit B.

28. On May 20, 2015, Defendant sent to Plaintiffs' designated representatives a letter claiming that the IRS Forms 2848 (*Power of Attorney and Declaration of Representative*) submitted to Defendant "are not sufficient for release of the requested information." See Exhibit C.

29. The IRS Forms 2848 (*Power of Attorney and Declaration of Representative*) comply with Defendant's own guidance on who may sign an IRS Form 2848 on behalf of a partnership for purposes of a TEFRA partnership-level examination.

30. Pursuant to IRS legal advice memorandum AM2015-004, a general partner may sign an IRS Form 2848 on behalf of a partnership for purposes of a TEFRA examination. See Exhibit D.

31. Earle Altman signed the Forms 2848 for Plaintiffs.

32. As of the date hereof, Defendant has not responded to Plaintiffs' FOIA request.

33. Plaintiffs need the information being withheld by Defendant to prepare their case pending in the Tax Court.

34.

Count I
(Production Under FOIA)

35. Plaintiffs incorporate by reference paragraphs 1 through 32 as though stated fully here.

36. Plaintiffs are statutorily entitled to the records they requested from Defendant pursuant to FOIA.

37. Defendant wrongfully withheld the requested records in violation of FOIA.

38. As of the date hereof, Defendant has not responded to Plaintiffs' FOIA request, notwithstanding FOIA's requirement of an agency response within 20 working days.

39. Plaintiffs exhausted their applicable administrative remedies with respect to their FOIA request to Defendant.

Count II
(Violation of the APA)

40. Plaintiffs incorporate by reference paragraphs 1 through 37 as though stated fully here.

41. Plaintiffs are entitled to the records they requested from Defendant pursuant to FOIA.

42. As of the date hereof, Defendant has not responded to Plaintiffs' FOIA request, notwithstanding FOIA's requirement of an agency response within 20 working days.

43. Defendant's failure to respond to Plaintiffs' FOIA request constitutes agency action unlawfully withheld and unreasonably delayed, in violation of the APA.

44. Defendant's failure to timely respond is arbitrary, capricious, an abuse of discretion, not in accordance with law, and without observance of procedure required by law, all in violation of the APA.

WHEREFORE, Plaintiffs request that this Court:

- a. declare Defendant's failure to disclose the requested records unlawful; and
- b. enjoin Defendant from withholding such records; and
- c. order Defendant to disclose the requested records to Plaintiffs; and
- d. expedite this proceeding pursuant to 28 U.S.C. § 1657; and
- d. award Plaintiffs their costs and reasonable attorney fees under 5 U.S.C. §552(a)(4)(E); and
- e. grant such other and further relief as the Court may deem just and proper.

Dated: Hackensack, NJ
June 17, 2015

Respectfully submitted,

s/Jeremy Klausner

AGOSTINO & ASSOCIATES
A Professional Corporation
Attorneys for Plaintiffs
500 Kingsland Avenue
Brooklyn, NY 11222
-and-
14 Washington Place
Hackensack, NJ 07601
(please respond to NJ address)

Tel: (201) 488-5400 (ext. 130)
Fax: (201) 488-5855
jklausner@agostinolaw.com

EXHIBIT A

AGOSTINO & ASSOCIATES, PC

A PROFESSIONAL CORPORATION
COUNSELLORS AT LAW
THE BANK HOUSE
14 WASHINGTON PLACE
HACKENSACK, NEW JERSEY 07601

(201) 488-5400

FAX

(201) 488-5855

NEW YORK OFFICE

500 KINGS LAND AVENUE
BROOKLYN, NY 11222
TEL (718) 389-2427
FAX: (718) 349-6997

July 30, 2014

TRANSCRIPT REQUEST

PRIVACY ACT, FOIA & IRC §§ 6103, 76029(c), 6571 REQUEST

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Internal Revenue Service
Disclosure Scanning Operation
Mail Stop 93A
P.O. Box 621506
Atlanta, GA 39901-0093

ATTENTION: FOIA REQUESTS

Taxpayer: Annabelle Limited Partnership & Broadway 21st Associates
Tax Years: 2004, 2005
Our File No.: 4918

Ladies and Gentlemen:

We represent Annabelle Limited Partnership and Broadway 21st Associates (collectively "Taxpayers") (see attached IRS Form 2848). Pursuant to the provisions of Sections 6103 and 7602(c) of the Internal Revenue Code ("IRC") and the Freedom of Information Act (the "Act" or "FOIA"), 5 U.S.C. Section 552, as amended, we request access to and copies of the following records maintained by the Internal Revenue Service ("IRS"):

1. All notices, letters, memorandum, contact history sheets, audit reports, correspondence and IRS forms prepared by or received by the IRS that refer or relate to the assessment or potential assessment of penalties and/or additions to tax pursuant to IRC § 6662(a) against the Taxpayer for the 2004 and 2005 tax years. This request includes a request for a copy of the memorandum required by IRC § 6751(b)(1) which provides:

No penalty under this title shall be assessed unless the initial determination of such assessment is personally approved (in writing) by

INTERNAL REVENUE SERVICE
PRIVACY ACT, FOIA & IRC § 6103 REQUEST
July 30, 2014
Page 2 of 2

the immediate supervisor of the individual making such determination or such higher level official as the Secretary may designate.

See I.R.M. 20.1.1.2.3(7) (Nov. 25, 2011).

In accordance with IRS Statement of Procedural Rules, Reg. section 601.702(b)(3), we agree to pay reasonable charges incurred in locating and copying the requested documents, to an upper limit not to exceed \$200.

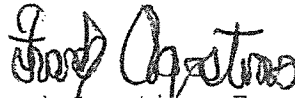
If you decide that any portion of a requested record is exempt from disclosure under the Act, I request that you send me the remaining nonexempt portion of that record.

In addition, to the extent that access is denied to inspect any part of the requested administrative files and documents, please send me an index and a detailed description of the deleted material and a statement of the statutory basis for withholding each such document.

As stated above, we have attached a copy of the IRS Form 2848, Power of Attorney and Declaration of Representative, authorizing us to make this request for Taxpayers. ***In accordance with the provisions of the Act, we expect to receive a reply within twenty working days.***

Kindly acknowledge receipt of this letter by countersigning the enclosed copy of this letter and returning the same in the enclosed self-addressed, stamped envelope.

Very truly yours,



Frank Agostino, Esq.

Enclosure

cc: Annabelle Limited Partnership and Broadway 21st Associates

RECEIPT ACKNOWLEDGED:

INTERNAL REVENUE SERVICE

BY: _____

TITLE: _____

DATE: _____

Form **2848**
 (Rev. June 2008)
 Department of the Treasury
 Internal Revenue Service

**Power of Attorney
 and Declaration of Representative**

OMB No. 1545-0150

For IRS Use Only

Received by:

Name _____

Telephone _____

Function _____

Date / /

▶ Type or print. ▶ See the separate instructions.

Part I Power of Attorney

Caution: Form 2848 will not be honored for any purpose other than representation before the IRS.

1 Taxpayer Information. Taxpayer(s) must sign and date this form on page 2, line 9.

Taxpayer name(s) and address 915 Broadway Realty Associates c/o ABS Partners Real Estate, LLC 200 Park Avenue South, 10th Floor New York, NY 10003	Social security number(s)	Employer identification number 13-3114687
	Daytime telephone number	Plan number (if applicable)

hereby appoint(s) the following representative(s) as attorney(s)-in-fact:

2 Representative(s) must sign and date this form on page 2, Part II.

Name and address Richard A. Levine, Esq. c/o Roberts & Holland LLP 825 Eighth Ave., 37th Fl., New York, NY 10019-7498	CAF No. _____ Telephone No. 212-903-8729 Fax No. 212-974-3059 Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>
Name and address Frank Agostino, Esq. c/o Agostino & Associates, The Bank House, 14 Washington Place, Hackensack, NJ 07601	CAF No. _____ Telephone No. 201-488-5400 Fax No. 201-488-5855 Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>
Name and address Elliot Pisem, Esq. c/o Roberts & Holland LLP 825 Eighth Ave., 37th Fl., New York, NY 10019-7498	CAF No. _____ Telephone No. 212-903-8777 Fax No. 212-974-3059 Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>

to represent the taxpayer(s) before the Internal Revenue Service for the following tax matters:

3 Tax matters

Type of Tax (Income, Employment, Excise, etc.) or Civil Penalty (see the instructions for line 3)	Tax Form Number (1040, 941, 720, etc.)	Year(s) or Period(s) (see the instructions for line 3)
Partnership examination proceedings in connection with Broadway 21st Associates	1065	2004, 2005

4 Specific use not recorded on Centralized Authorization File (CAF). If the power of attorney is for a specific use not recorded on CAF, check this box. See the instructions for Line 4. Specific Uses Not Recorded on CAF

5 Acts authorized. The representatives are authorized to receive and inspect confidential tax information and to perform any and all acts that I (we) can perform with respect to the tax matters described on line 3, for example, the authority to sign any agreements, consents, or other documents. The authority does not include the power to receive refund checks (see line 6 below), the power to substitute another representative or add additional representatives, the power to sign certain returns, or the power to execute a request for disclosure of tax returns or return information to a third party. See the line 5 instructions for more information.

Exceptions. An unenrolled return preparer cannot sign any document for a taxpayer and may only represent taxpayers in limited situations. See **Unenrolled Return Preparer** on page 1 of the instructions. An enrolled actuary may only represent taxpayers to the extent provided in section 10.3(d) of Treasury Department Circular No. 230 (Circular 230). An enrolled retirement plan administrator may only represent taxpayers to the extent provided in section 10.3(e) of Circular 230. See the line 5 instructions for restrictions on tax matters partners. In most cases, the student practitioner's (levels k and l) authority is limited (for example, they may only practice under the supervision of another practitioner).

List any specific additions or deletions to the acts otherwise authorized in this power of attorney: _____

6 Receipt of refund checks. If you want to authorize a representative named on line 2 to receive, **BUT NOT TO ENDORSE OR CASH**, refund checks, initial here _____ and list the name of that representative below.

Name of representative to receive refund check(s) ▶

For Privacy Act and Paperwork Reduction Act Notice, see page 4 of the instructions.


Form **2848** (Rev. 6-2008)

Earlin Investment, L.P., Managing Partner
 By: Earlin Management, LLC, its General Partner
 By: Earle S. Altman, its Manager

- 7 **Notices and communications.** Original notices and other written communications will be sent to you and a copy to the first representative listed on line 2.
- a If you also want the second representative listed to receive a copy of notices and communications, check this box
- b If you do not want any notices or communications sent to your representative(s), check this box
- 8 **Retention/revocation of prior power(s) of attorney.** The filing of this power of attorney automatically revokes all earlier power(s) of attorney on file with the Internal Revenue Service for the same tax matters and years or periods covered by this document. If you do not want to revoke a prior power of attorney, check here
- YOU MUST ATTACH A COPY OF ANY POWER OF ATTORNEY YOU WANT TO REMAIN IN EFFECT.**

9 **Signature of taxpayer(s).** If a tax matter concerns a joint return, both husband and wife must sign if joint representation is requested, otherwise, see the instructions. If signed by a corporate officer, partner, guardian, tax matters partner, executor, receiver, administrator, or trustee on behalf of the taxpayer, I certify that I have the authority to execute this form on behalf of the taxpayer.

▶ **IF NOT SIGNED AND DATED, THIS POWER OF ATTORNEY WILL BE RETURNED.**

 _____ March 2, 2011 _____ Managing Partner
 Signature Date Title (if applicable)

See signature block above.

 Print Name PIN Number Print name of taxpayer from line 1 if other than individual

 Signature Date Title (if applicable)

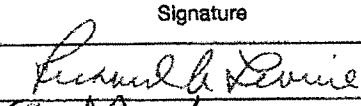
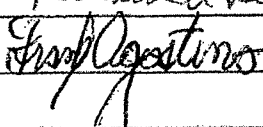
 Print Name PIN Number

Part II Declaration of Representative

Caution: Students with a special order to represent taxpayers in qualified Low Income Taxpayer Clinics or the Student Tax Clinic Program (levels k and l), see the instructions for Part II. Under penalties of perjury, I declare that:

- I am not currently under suspension or disbarment from practice before the Internal Revenue Service;
- I am aware of regulations contained in Circular 230 (31 CFR, Part 10), as amended, concerning the practice of attorneys, certified public accountants, enrolled agents, enrolled actuaries, and others;
- I am authorized to represent the taxpayer(s) identified in Part I for the tax matter(s) specified there; and
- I am one of the following:
 - a Attorney—a member in good standing of the bar of the highest court of the jurisdiction shown below.
 - b Certified Public Accountant—duly qualified to practice as a certified public accountant in the jurisdiction shown below.
 - c Enrolled Agent—enrolled as an agent under the requirements of Circular 230.
 - d Officer—a bona fide officer of the taxpayer's organization.
 - e Full-Time Employee—a full-time employee of the taxpayer.
 - f Family Member—a member of the taxpayer's immediate family (for example, spouse, parent, child, brother, or sister).
 - g Enrolled Actuary—enrolled as an actuary by the Joint Board for the Enrollment of Actuaries under 29 U.S.C. 1242 (the authority to practice before the Internal Revenue Service is limited by section 10.3(d) of Circular 230).
 - h Unenrolled Return Preparer—the authority to practice before the Internal Revenue Service is limited by Circular 230, section 10.7(c)(1)(viii). You must have prepared the return in question and the return must be under examination by the IRS. See Unenrolled Return Preparer on page 1 of the instructions.
 - k Student Attorney—student who receives permission to practice before the IRS by virtue of their status as a law student under section 10.7(d) of Circular 230.
 - l Student CPA—student who receives permission to practice before the IRS by virtue of their status as a CPA student under section 10.7(d) of Circular 230.
 - r Enrolled Retirement Plan Agent—enrolled as a retirement plan agent under the requirements of Circular 230 (the authority to practice before the Internal Revenue Service is limited by section 10.3(e)).

▶ **IF THIS DECLARATION OF REPRESENTATIVE IS NOT SIGNED AND DATED, THE POWER OF ATTORNEY WILL BE RETURNED.** See the Part II instructions.

Designation—Insert above letter (a-r)	Jurisdiction (state) or identification	Signature	Date
a	NY		3/3/2011
a	NJ		3/3/2011
a	NY		

Form 2848

Part I, Item 2, Representatives, and
Part II, Declaration of Representatives, Continued

Taxpayer: 915 Broadway Realty Associates
EIN: 13-3114687

Name and address Mark E. Wilensky, Esq. c/o Roberts & Holland LLP 825 Eighth Ave., 37 th Fl., New York, NY 10019-7498		CAF No. Telephone No.: 212-903-8732 Facsimile No.: 212-974-3059 Check if new Address <input type="checkbox"/> Tel No. <input type="checkbox"/> Fax No. <input type="checkbox"/>	
Code a	State New York	Signature <i>Mark E. Wilensky</i>	Date 03/03/2011

Form **2848**
 (Rev. June 2008)
 Department of the Treasury
 Internal Revenue Service

**Power of Attorney
 and Declaration of Representative**

OMB No. 1545-0150
 For IRS Use Only
 Received by: _____
 Name _____
 Telephone _____
 Function _____
 Date ____/____/____

▶ Type or print. ▶ See the separate instructions.

Part I Power of Attorney

Caution: Form 2848 will not be honored for any purpose other than representation before the IRS.

1 Taxpayer information. Taxpayer(s) must sign and date this form on page 2, line 9.

Taxpayer name(s) and address 915 Broadway Realty Associates c/o ABS Partners Real Estate, LLC 200 Park Avenue South, 10th Floor New York, NY 10003	Social security number(s)	Employer identification number 13-3114687
	Daytime telephone number	Plan number (if applicable)

hereby appoint(s) the following representative(s) as attorney(s)-in-fact:

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Name and address Richard A. Levine, Esq. c/o Roberts & Holland LLP 825 Eighth Ave., 37th Fl., New York, NY 10019-7498	CAF No. _____ Telephone No. 212-903-8729 Fax No. 212-974-3059 Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>
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to represent the taxpayer(s) before the Internal Revenue Service for the following tax matters:

3 Tax matters

Type of Tax (Income, Employment, Excise, etc.) or Civil Penalty (see the instructions for line 3)	Tax Form Number (1040, 941, 720, etc.)	Year(s) or Period(s) (see the instructions for line 3)
Partnership examination proceedings in connection with Annabelle Limited Partnership	1065	2004, 2005

4 Specific use not recorded on Centralized Authorization File (CAF). If the power of attorney is for a specific use not recorded on CAF, check this box. See the instructions for Line 4. Specific Uses Not Recorded on CAF

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Exceptions. An unenrolled return preparer cannot sign any document for a taxpayer and may only represent taxpayers in limited situations. See Unenrolled Return Preparer on page 1 of the instructions. An enrolled actuary may only represent taxpayers to the extent provided in section 10.3(d) of Treasury Department Circular No. 230 (Circular 230). An enrolled retirement plan administrator may only represent taxpayers to the extent provided in section 10.3(e) of Circular 230. See the line 5 instructions for restrictions on tax matters partners. In most cases, the student practitioner's (levels k and l) authority is limited (for example, they may only practice under the supervision of another practitioner).

List any specific additions or deletions to the acts otherwise authorized in this power of attorney: _____

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Name of representative to receive refund check(s) ▶ _____

For Privacy Act and Paperwork Reduction Act Notice, see page 4 of the instructions.

Form **2848** (Rev. 6-2008)

Earlin Investment, L.P., Managing Partner
 By: Earlin Management, LLC, its General Partner
 By: Earle S. Altman, its Manager


Form 2848 (Rev. 6-2008)

Page 2

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- a If you also want the second representative listed to receive a copy of notices and communications, check this box
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- YOU MUST ATTACH A COPY OF ANY POWER OF ATTORNEY YOU WANT TO REMAIN IN EFFECT.**

9 Signature of taxpayer(s). If a tax matter concerns a joint return, both husband and wife must sign if joint representation is requested, otherwise, see the instructions. If signed by a corporate officer, partner, guardian, tax matters partner, executor, receiver, administrator, or trustee on behalf of the taxpayer, I certify that I have the authority to execute this form on behalf of the taxpayer.

▶ IF NOT SIGNED AND DATED THIS POWER OF ATTORNEY WILL BE RETURNED.


 Signature _____ Date March 2, 2011 Title (if applicable) Managing Partner

See signature block above.

Print Name _____ PIN Number _____ Print name of taxpayer from line 1 if other than individual _____

Signature _____ Date _____ Title (if applicable) _____

Print Name _____ PIN Number _____

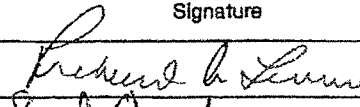
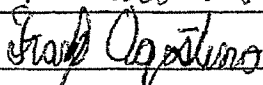
Part II Declaration of Representative

Caution: Students with a special order to represent taxpayers in qualified Low Income Taxpayer Clinics or the Student Tax Clinic Program (levels k and l), see the instructions for Part II.

Under penalties of perjury, I declare that:

- * I am not currently under suspension or disbarment from practice before the Internal Revenue Service;
- * I am aware of regulations contained in Circular 230 (31 CFR, Part 10), as amended, concerning the practice of attorneys, certified public accountants, enrolled agents, enrolled actuaries, and others;
- * I am authorized to represent the taxpayer(s) identified in Part I for the tax matter(s) specified there; and
- * I am one of the following:
 - a Attorney—a member in good standing of the bar of the highest court of the jurisdiction shown below.
 - b Certified Public Accountant—duly qualified to practice as a certified public accountant in the jurisdiction shown below.
 - c Enrolled Agent—enrolled as an agent under the requirements of Circular 230.
 - d Officer—a bona fide officer of the taxpayer's organization.
 - e Full-Time Employee—a full-time employee of the taxpayer.
 - f Family Member—a member of the taxpayer's immediate family (for example, spouse, parent, child, brother, or sister).
 - g Enrolled Actuary—enrolled as an actuary by the Joint Board for the Enrollment of Actuaries under 29 U.S.C. 1242 (the authority to practice before the Internal Revenue Service is limited by section 10.3(d) of Circular 230).
 - h Unenrolled Return Preparer—the authority to practice before the Internal Revenue Service is limited by Circular 230, section 10.7(c)(1)(viii). You must have prepared the return in question and the return must be under examination by the IRS. See Unenrolled Return Preparer on page 1 of the instructions.
 - k Student Attorney—student who receives permission to practice before the IRS by virtue of their status as a law student under section 10.7(d) of Circular 230.
 - l Student CPA—student who receives permission to practice before the IRS by virtue of their status as a CPA student under section 10.7(d) of Circular 230.
 - r Enrolled Retirement Plan Agent—enrolled as a retirement plan agent under the requirements of Circular 230 (the authority to practice before the Internal Revenue Service is limited by section 10.3(e)).

▶ IF THIS DECLARATION OF REPRESENTATIVE IS NOT SIGNED AND DATED, THE POWER OF ATTORNEY WILL BE RETURNED. See the Part II instructions.

Designation—Insert above letter (a-r)	Jurisdiction (state) or identification	Signature	Date
a	NY		3/3/2011
a	NJ		3/3/2011
a	NY		

Form 2848

Part I, Item 2, Representatives, and
Part II, Declaration of Representatives, Continued

Taxpayer: 915 Broadway Realty Associates
EIN: 13-3114687

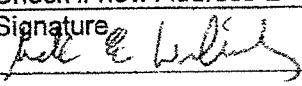
Name and address Mark E. Wilensky, Esq. c/o Roberts & Holland LLP 825 Eighth Ave., 37 th Fl., New York, NY 10019-7498		CAF No. Telephone No.: 212-903-8732 Facsimile No.: 212-974-3059 Check if new Address <input type="checkbox"/> Tel No. <input type="checkbox"/> Fax No. <input type="checkbox"/>	
Code a	State New York	Signature 	Date 03/03/2011

EXHIBIT B

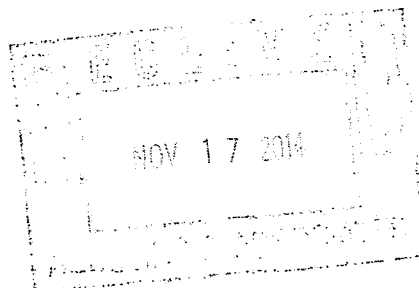


PRIVACY, GOVERNMENTAL
LIAISON AND DISCLOSURE

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

November 13, 2014

Agostino & Associates
Attn: Frank Agostino
The Bank House
14 Washington Place
Hackensack, NJ 07601



In Re: Annabelle Limited Partnership and Broadway 21 Associates

Dear Mr. Agostino:

I am responding to your Freedom of Information Act (FOIA) request dated July 30, 2014 that we received on August 15, 2014.

On October 16, 2014 I asked for more time to obtain the records you requested. I am still working on your request and need additional time to review the records. I will contact you by December 15, 2014 if I am still unable to complete your request.

Once again, I apologize for any inconvenience this delay may cause.

If you have any questions please call Disclosure Specialist Eileen T Lynch ID # 100301362, at 617-316-2406 or write to: Internal Revenue Service, Centralized Processing Unit – Stop 93A, PO Box 621506, Atlanta, GA 30362. Please refer to case number F14230-0089.

Sincerely,

A handwritten signature in cursive script that reads "Thomas M Batch".

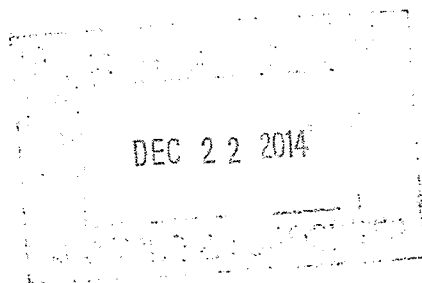
Thomas M Batch
Disclosure Manager
Disclosure Office 1



PRIVACY, GOVERNMENTAL
LIAISON AND DISCLOSURE

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

December 12, 2014



Frank Agostino
The Bank House
14 Washington Place
Hackensack, NJ 07601

In Re: Annabelle Limited Partnership & Broadway 21 Associates

Dear Mr. Agostino:

I am responding to your Freedom of Information Act (FOIA) request dated July 30, 2014 that we received on August 15, 2014.

On November 13, 2014 I asked for more time to obtain the records you requested. I am still working on your request and need additional time to review the files. I will contact you by January 30, 2015 if I am still unable to complete your request.

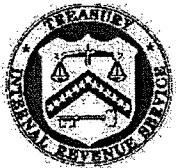
Once again, I apologize for any inconvenience this delay may cause.

If you have any questions please call Disclosure Specialist Eileen T Lynch ID # 100301362, at 617-316-2406 or write to: Internal Revenue Service, Centralized Processing Unit – Stop 93A, PO Box 621506, Atlanta, GA 30362. Please refer to case number F14230-0089.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Mele".

Ronald T Mele
Disclosure Manager
Disclosure Office 1



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

PRIVACY, GOVERNMENTAL
LIAISON AND DISCLOSURE

April 28, 2015

84 106 715 011
MAY 1 2015

Frank Agostino
The Bank House
14 Washington Place
Hackensack, NJ 07601

In Re: Annabelle Limited Partnership & Broadway 21 Associates

Dear Mr. Agostino:

I am responding to your Freedom of Information Act (FOIA) request dated July 30, 2014 that we received on August 15, 2014.

On March 27, 2015 I asked for more time to obtain the records you requested. I am still working on your request and need additional time to review the records. I will contact you by May 29, 2015 if I am still unable to complete your request.

Once again, I apologize for any inconvenience this delay may cause.

If you have any questions please call Disclosure Specialist Eileen T Lynch ID # 100301362, at 617-316-2406 or write to: Internal Revenue Service, Centralized Processing Unit – Stop 93A, PO Box 621506, Atlanta, GA 30362. Please refer to case number F14230-0089.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Mele".

Ronald T Mele
Disclosure Manager
Disclosure Office 1

EXHIBIT C

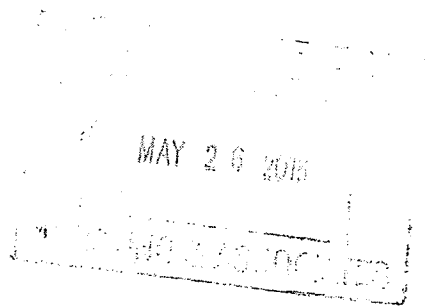


PRIVACY, GOVERNMENTAL
LIAISON AND DISCLOSURE

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

May 20, 2015

Frank Agostino
The Bank House
14 Washington Place
Hackensack, NJ 07601



In Re: Annabelle Limited Partnership & Broadway 21st Associates

Dear Mr. Agostino:

I am responding to your Freedom of Information Act (FOIA) request dated July 30, 2014 that we received on August 15, 2014.

You asked for multiple documents associated with the examination file for tax years 2004 and 2005.

The Office of Chief Counsel, Area Counsel 1 (Long Island) has determined that the Forms 2848 submitted by your office for Annabelle Limited Partnership, Broadway 21st Associates, and 915 Broadway Realty Associates are not sufficient for release of the requested information.

Please send us a valid authorization for each of the three entities within 35 days.

If you have any questions please call Disclosure Specialist Eileen T Lynch ID # 100301362, at 617-316-2406 or write to: Internal Revenue Service, Centralized Processing Unit – Stop 93A, PO Box 621506, Atlanta, GA 30362. Please refer to case number F14230-0089.

Sincerely,

Handwritten signature of Ronald T Mele.

Ronald T Mele
Disclosure Manager
Disclosure Office 1

EXHIBIT D

Office of Chief Counsel
Internal Revenue Service
Memorandum

Number: AM2015-004
Release Date: 4/3/2015

CC: PA:07:SLKaron
POSTN-102507-15

UICL: 6224.00-00, 6103.00-00

date: March 26, 2015

to: Linda M. Kroening
Division Counsel
(Large Business & International)

from: Drita Tonuzi
Associate Chief Counsel
(Procedure & Administration)

subject: Powers of Attorney in Partnership Level Proceedings

This Chief Counsel Advice responds to your request for assistance. This advice may not be used or cited as precedent.

From whom is a power of attorney ("POA") sufficient in order for an employee of the Service to solicit documents and discuss details of a partnership-level proceeding with the individual granted power of attorney?

- a. Who is authorized to sign a POA appointing a representative for a partnership or limited liability company (LLC) being examined in a TEFRA partnership-level examination?
- b. Who is authorized to sign a POA appointing a representative for a partnership or limited liability company for other purposes?

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CONCLUSIONS

A general partner or, in the case of an LLC, a member-manager, may sign a POA for purposes of a TEFRA partnership-level examination¹ or for other tax purposes of the partnership. A POA can also be secured from a limited partner or LLC member for the purposes of securing partnership item information and disclosing partnership information to the POA. In the case of an LLC that has no member who is also a manager, the non-member manager² may sign the POA for purposes of establishing that it would be appropriate and helpful to secure partnership item information including securing documents and discussing the information with the designated individual.

BACKGROUND

The Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA") added sections 6221 through 6232 to the Internal Revenue Code, which provide unified partnership audit and litigation procedures for partnerships (except certain small partnerships) filing Form 1065, U.S. Return of Partnership Income (TEFRA partnerships).³ Under the unified partnership audit and litigation procedures, the TEFRA partnership return is subject to a single audit and court proceeding binding on all the direct and indirect partners. Only the partners whose tax liabilities will be affected, and generally not the TEFRA partnership itself, are the parties-in-interest in the partnership-level audit or litigation. *Chef's Choice v. Commissioner*, 95 T.C. 388 (1990).

LAW AND ANALYSIS

State Law Background

Under the provisions of the Uniform Partnership Act (1997) and the Uniform Limited Partnership Act (2001)⁴, a general partner is an agent of the partnership for purposes of its business except in limited circumstances.⁵ Section 301 of Uniform Partnership Act (1997), section 402 of the Uniform Limited Partnership Act (2001). An act of the general partner for apparently carrying on in the ordinary course of partnership business binds

¹ Typically the Service will interact with the tax matters partner, as defined by section 6231(a)(7) of the Internal Revenue Code, or his representative during a partnership-level examination. As section 6231(a)(7) and Treas. Reg. Sec. 301.6231(a)(7)-2 provide, the tax matters partner is a general partner or member-manager except in limited circumstances.

² A non-member manager is able to act for an entity under state or foreign law where the entity is formed, but has no direct ownership interest in the entity.

³ Sections 6233 and 6234 were later added to these provisions.

⁴ While states have generally adopted most provisions of these acts, each state's laws may vary in certain regards. These acts are being cited as general background and should not be relied upon in all circumstances.

⁵ The general partner does not serve as agent where the partner had no authority to act for the partnership in the particular manner and the person dealing with the partner knew or received a notification that the person lacked authority. See Section 301 of Uniform Partnership Act (1997).

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the partnership. *Id.* An act of limited partner in a limited partnership does not bind such partnership. Section 302 of the Uniform Limited Partnership Act (2001).

Section 403 of the Uniform Partnership Act (1997) provides that a partnership shall provide partners and their agents and attorneys access to its books and records. The partnership is also required to provide former partners and their agents and attorneys access to books and records pertaining to the period during which they were partners. The right of access provides the opportunity to inspect and copy books and records during ordinary business hours. A general partner in a limited partnership also may copy and inspect any records maintained by the limited partnership regarding the limited partnership's activities and financial condition. Section 402 of the Uniform Limited Partnership Act (2001).

Limited liability companies have largely supplanted state law partnerships in modern times. LLC's typically are taxed as partnerships. The LLC may be managed by either its members or a manager with no ownership interest in the LLC. See section 407 of the Revised Uniform Limited Liability Company Act (2006). The specific laws of the state in which the LLC was established govern the terms regarding who can act for, and inspect and copy the records of, the LLC. For example, under the provisions of the Revised Uniform Limited Liability Company Act (2006)⁶, a member in a member-managed limited liability company generally may, upon reasonable notice inspect and copy during regular business hours, at a reasonable location specified by the company, any record maintained by the company regarding the company's activities, financial condition, and other circumstances, to the extent the information is material to the member's rights and duties under the LLC's operating agreement. Section 410(a) of the Revised Uniform Limited Liability Company Act (2006).

Depending on the laws of the state where the LLC was formed, members of a manager-managed limited liability company may, during regular business hours and at a reasonable location specified by the company, have the right to obtain from the company and inspect and copy full information regarding the activities, financial condition, and other circumstances of the company as is just and reasonable if: the member seeks the information for a purpose material to the member's interest as a member; the member makes a demand in a record received by the company, describing with reasonable particularity the information sought and the purpose for seeking the information; and the information sought is directly connected to the member's purpose. *Id.*

TEFRA Partnership Provisions

⁶ Note that the Revised Uniform Limited Liability Company Act (2006) is a proposal for states to adopt as law for the governance of LLC's and, while the act tries to summarize many state provisions, is not actual law. Again, LLCs are governed by the laws of the state where the LLC was formed.

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Section 6221 of the Internal Revenue Code provides that the tax treatment of any partnership item shall be determined at the partnership level, except as otherwise provided in subchapter C of Chapter 63 on the Internal Revenue Code.

Section 6224(a) provides that "any partner has the right to participate in any administrative proceeding relating to the determination of partnership items at the partnership level."

Section 6226(c) provides that in any action initiated by the filing of a petition under that section, each person who was a partner in such partnership at any time during the year at issue shall be treated as a party to such action.

Section 6231(a)(2) provides that the term "partner" means a partner in the partnership and any other person whose income tax liability under subtitle A is determined in whole or in part by taking into account directly or indirectly partnership items of the partnership.

Section 6229(b) states that the period for assessing tax with respect to any person which is attributable to any partnership item (or affected item) for a partnership taxable year may be extended with respect to all partners, by an agreement entered into by the Service and the tax matters partner, or any other person authorized by the partnership in writing to enter such an agreement.

Disclosure Authorization

Section 6103(e)(1)(c) provides that the return of a partnership shall upon written request be open to inspection by or disclosure to any person who was a member of such partnership during any part of the period covered by the return. Section 6103(e)(6) authorizes, upon written request, the return to also be open to inspection by or disclosure to the member's attorney in fact duly authorized in writing. Section 6103(e)(7) provides that return information of the partnership is open to inspection by or disclosure to the member or the member's attorney in fact if the Secretary determines that such disclosure would not seriously impair Federal tax administration.

Section 6103(h)(4) states that a return or return information may be disclosed in a federal judicial or administrative proceeding if the taxpayer is a party to the proceeding, or the proceeding arose out of, or in connection with, determining the taxpayer's civil liability, in respect of any tax imposed under the Internal Revenue Code. Section 6223(a)(1) provides for the issuance of a notice of the beginning of an "administrative proceeding" at the partnership level which is issued at the beginning of a TEFRA audit. In *Abelein v. United States*, 323 F.3d 1210 (9th Cir. 2003) the court held that a TEFRA partnership audit constituted an "administrative proceeding" for the purposes of section 6103(h)(4) and that the partners were parties to that proceeding.

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Section 6103(k)(6) provides that an internal revenue officer or employee may in connection with his official duties relating to any audit or civil tax investigation or any other offense under the internal revenue laws, disclose return information to the extent that such disclosure is necessary in obtaining information, which is not otherwise reasonably available, with respect to the correct determination of tax, liability for tax, or with respect to the enforcement of any other provision of the Internal Revenue Code. Treas. Reg. Sec. 301.6103(k)(6)-1(c)(1) defines "necessary" in this context to mean "appropriate and helpful." Specific duties for which such disclosures may be made include, but are not limited to: establishing or verifying the correctness or completeness of any return or return information; determining the responsibility for filing a return, for making a return if none has been made, or for performing such acts as may be required by law concerning such matters; establishing or verifying misconduct (or possible misconduct) or other activity proscribed by the internal revenue laws or related statutes; and obtaining, verifying, or establishing information concerned with making determinations regarding a taxpayer's liability under the Internal Revenue Code, including, but not limited to, the administrative appeals process and any ruling, negotiated agreement, or pre-filing process. Treas. Reg. Sec. 301.6103(k)(6)-1(a).

DISCUSSION

The Service may make inquiries and disclose details of a TEFRA partnership-level examination to any person who is a party to, or has authority to represent a party in, the partnership examination. See Sections 6103(h)(4) and 6224(a). Such parties generally include any direct or indirect partner of the partnership, or member of the LLC treated as a partnership, for the taxable year at issue. The Service is also authorized under section 6103(e)(1)(C) to allow a partner or member, upon written request, to inspect the items of the partnership. To the extent any partner may inspect or receive return information, that partner's attorney in fact also has such authority. See sections 6103(e)(6) and section 6103(h)(4). As a result, a POA from a partner of the partnership, including a member of an LLC taxed as a partnership, during the taxable year at issue allows the Service to solicit and discuss partnership-level issues with the person appointed. Because the partnership or LLC itself is generally not a party to the partnership proceeding or a member in itself, the POA from the partner should be done in the partner's individual capacity as a partner. A general partner or managing member, if authorized by state law, can also execute and sign a POA on behalf of the partnership or LLC. A limited partner or member who is not a manager cannot act for the entity, and may only execute a POA in the partner's or member's individual capacity.⁷ Only someone duly authorized by state law (or foreign law in the case of a foreign entity) to act for and bind the entity can execute a POA in the name of the entity. Treas. Reg. Sec. 601.503(c).⁸

⁷ Thus, neither a limited partner nor his POA can sign contracts or any kind of agreement for the partnership itself.

⁸ The operating agreement of the partners or members of the entity, as approved under state or foreign law where the entity was formed, will generally dictate who is authorized to act for (i.e. manage) the entity

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To the extent that a partner does not have authority to act for the partnership or LLC, however, he may have limited access to the partnership or LLC books and records. In such circumstances, the Service may want a POA executed in the name of the entity itself. Typically a general partner or state law manager can act for a partnership or LLC taxed as a partnership, as provided by the governing state law.

To the extent a manager of a LLC has no ownership interest, however, he is not treated as a "partner" to whom partnership return information can be disclosed under section 6103(e). I.R.C. Sec. 761(b) (members treated as "partners"). The non-member manager as well as the LLC itself are also not generally considered parties in the TEFRA examination. Nevertheless, section 6103(k)(6) authorizes the Service to solicit documents and discuss details of the partnership-level examination with any individual where the Service employee reasonably believes such discussion is helpful and appropriate to obtaining information to determine partnership items. A POA by a LLC through its manager helps to establish the reasonableness and appropriateness of discussing issues in the partnership-level examination with the individual designated by the entity. Similarly, where reasonable, such designation would also be sufficient in the context of a private letter ruling request from the entity or in the context of proceedings or investigations pertaining to the entity's filing obligations.

The authorization from a partner or a person with authority to act for the partnership, however, may not be sufficient to provide authority to extend the period of limitations for all of its partners. If the partnership wishes to authorize someone other than the tax matters partner to extend the period with respect to all partners, the partnership should provide a statement in accordance with Treas. Reg. Sec. 301.6229(b)-1. The statement should: provide that it is an authorization for such person to extend the assessment period with respect to all partners; identify the partnership, the person being authorized, and the taxable years for which the authorization is effective; and, be signed by all persons who were general partners at any time during the years for which the authorization is effective. *Id.*

Please call (202) 317-6834 if you have any further questions.

itself and the extent of any authorization. A manager may operate under many potential titles such as president, general partner, tax director, chief executive officer, board of directors, etc. However, it is the operating agreement that ultimately dictates whether the pertinent titled position has authorization to act for the entity.