



June 28, 2024

Ms. Aviva Aron-Dine
Acting Assistant Secretary for Tax Policy
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

The Honorable Daniel I. Werfel
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

The Honorable Marjorie A. Rollinson
Chief Counsel
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

RE: Centralized Partnership Audit Regime, Including Related Forms and Schedules

Dear Ms. Aron-Dine, Commissioner Werfel and Ms. Rollinson:

The American Institute of CPAs (AICPA) is pleased to submit recommendations to simplify the administration of the forms, instructions and schedules used to push out adjustments under Internal Revenue Code (IRC or “Code”) section 6226 and the filing of an Administrative Adjustment Request (AAR) under section 6227,¹ and to request further guidance related to the centralized partnership audit regime. To further build upon our most recently submitted comment letter² and to remedy unresolved challenges currently faced by tax practitioners, we urge your consideration of the recommendations addressed in the letter.

Our comments and recommendations focus on the following areas:

I. Push-Out – General

1. Revise Form 9986 to Include Date Push-out Statement Mailed by Passthrough Partner
2. Provide a Rule Regarding the Due Date of an Adjustment Year Return When Partnership Not in Existence
3. Do not Require Partnerships that Push Out Adjustments to Compute an Imputed Underpayment
4. Allow Push-Out Elections at Any Time Before 45 Days After the Date the Final Partnership Adjustment is Mailed
5. Provide Guidance When There is Overwithholding under Chapter 3 or Chapter 4
6. Simplify Rules for Issuing Multiple Push-Out Statements for Same Reviewed Year
7. Provide Procedures for a Partnership Receiving Form 9986 after Termination

¹ Unless otherwise indicated, hereinafter, all section references are to the Internal Revenue Code of 1986, as amended, or to the Treasury Regulations promulgated thereunder.

² AICPA [comment letter](#) requesting improvements to the Centralized Partnership Audit Regime, including related forms and schedules.

Ms. Aviva Aron-Dine
The Honorable Daniel I. Werfel
The Honorable Marjorie A. Rollinson
June 28, 2023
Page 2 of 3

II. Push-Out – Non-Passthrough Partner

1. Revise Form 8978 and Related Schedule A to Optimally Capture Adjustments
2. Do Not Require Forms to Address Treatment of Additional Reporting Year Tax in the Reporting Year Until Regulations Issued
3. Provide Procedures for Deceased Person or Entity Receiving Form 8986 When No Longer in Existence

III. Changes to Regulations

1. Clarify Treasury Regulation § 301.9100-2
2. Imputed Underpayment
 - a. Allow Treatment of an Adjustment as Zero when Calculating Imputed Underpayment
 - b. Exclude Adjustments Related to Non-Income Items from Imputed Underpayment
 - c. Include Net Negative Adjustments to Credits in Computation of Imputed Underpayment Under Section 301.6225-1
3. Powers of Attorney
 - a. Revise Internal Revenue Manual 4.31.9.7.10 to Require a Partner to Sign the Power of Attorney for a BBA Partnership
 - b. Remove Requirement in Internal Revenue Manual 4.31.9.7.10(3) for New Power of Attorney When Partnership Representative Changes
4. Provide Coordination Rules to Eliminate Double Taxation under Chapter 1 and Chapter 2 (Self Employed Contributions Act Tax)

IV. Process Changes

1. Limit Electronic Submission Through the IRS Web Portal to Modification-Related Information
2. Improve Accessibility of BBA Related Materials
 - a. Enhance Accessibility of BBA Related Forms
 - b. Make BBA Audit Letters and Job Aids Publicly Available
3. Provide Guidance for Making Deposits Under Section 6603

The AICPA is the world's largest member association representing the accounting profession, with more than 400,000 members in the United States and worldwide, and a history of serving the public interest since 1887. Our members advise clients on federal, state, and international tax matters and prepare income and other tax returns for millions of Americans. Our members provide services to individuals, not-for-profit organizations, small and medium-sized businesses, as well as America's largest businesses.

We appreciate your consideration of these comments and welcome the opportunity to discuss these issues further. If you have any questions, please contact Rochelle Hodes, Chair, AICPA BBA CPAR Working Group, at (202) 552-8033 or Rochelle.Hodes@crowe.com; Nick Passini, Chair, AICPA Partnership Taxation Technical Resource Panel, at (563) 888-4019 or

Ms. Aviva Aron-Dine
The Honorable Daniel I. Werfel
The Honorable Marjorie A. Rollinson
June 28, 2023
Page 3 of 3

nick.passini@rsmus.com; or Kristin Esposito AICPA Director – Tax Policy & Advocacy, at (202) 434-9241 or Kristin.Esposito@aicpa-cima.com.

Sincerely



Blake Vickers, CPA, CGMA
Chair, AICPA Tax Executive Committee

cc: Mr. Douglas O'Donnell, Deputy Commissioner, Internal Revenue Service
Ms. Heather Malloy, Chief Taxpayer Compliance Officer, Internal Revenue Service
Ms. Holly Paz, Commissioner (LB&I), Internal Revenue Service
Mr. Cliff Scherwinski, Director, (LB&I / PTE), Internal Revenue Service
Ms. Holly Porter, Associate Chief Counsel (P&SI), Internal Revenue Service
Mr. Paul Butler, Associate Chief Counsel, Procedure and Administration, Internal Revenue Service

AMERICAN INSTITUTE OF CPAs
Centralized Partnership Audit Regime, Including Related Forms and Schedules
June 28, 2024

Background

The Bipartisan Budget Act of 2015¹ (BBA) repealed the partnership audit provisions under the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA)² and introduced a new centralized partnership audit regime (CPAR) for Internal Revenue Service (IRS) audits of partnerships. The CPAR is generally effective for partnership taxable years beginning on or after January 1, 2018. The CPAR applies to partnerships that either cannot or choose not to opt out of the regime (“BBA partnerships”). The CPAR also modified how BBA partnerships can adjust previously filed partnership returns, requiring the submission of an AAR.

The CPAR was intended to provide a mechanism for the IRS to audit partnerships more efficiently. However, the IRS, taxpayers, and practitioners who have been working under the CPAR regime since its inception have uncovered numerous issues which have created confusion. Additionally, the CPAR regime has created an extreme administrative burden for the IRS, taxpayers and practitioners.

From the inception of the CPAR regime, the IRS has made significant efforts to continually improve its implementation by seeking input from and participating in sustained engagement with stakeholders, developing innovative solutions as challenges arise, and responding to issues as they emerge. However, a number of persistent issues remain unaddressed.

Unless action is taken to address the outstanding concerns, we expect these issues to continue to compound as the number of partnership returns filed and audited continues to grow.³ The IRS has received significant funding under the Inflation Reduction Act of 2022 (IRA).⁴ Per the [Internal Revenue Service Inflation Reduction Act Strategic Operating Plan FY 2023-2031](#) (SOP), part of the additional funds will be used to increase enforcement efforts with respect to large corporations, complex partnerships, and high income individuals.⁵ Specifically, the IRS has been significantly increasing its audits of partnerships through multiple audit programs, including its Large Partnership Compliance (LPC) program and general partnerships audit programs in the Large Business and International (LB&I) and Small Business/Self-Employed divisions, which are being combined into a new pass-through entity organization under LB&I. The increase in partnership audits is expected to continue. In its recent SOP update, the IRS announced that it planned to increase audit rates by nearly ten-fold on large, complex partnerships with assets over \$10 million.⁶

¹ P.L. 114-74.

² P.L. 97-248.

³ Table 2 of the [Internal Revenue Service Data Book, October 1, 2022 to September 30, 2023](#), states that 5,117,987 partnership returns were filed in fiscal year 2023, up from 4,582,471 in the prior fiscal year.

⁴ P.L. 117-169.

⁵ www.irs.gov/pub/irs-pdf/p3744.pdf, <https://www.irs.gov/newsroom/irs-announces-sweeping-effort-to-restore-fairness-to-tax-system-with-inflation-reduction-act-funding-new-compliance-efforts>, <https://www.irs.gov/newsroom/irs-ramps-up-new-initiatives-using-inflation-reduction-act-funding-to-ensure-complex-partnerships-large-corporations-pay-taxes-owed-continues-to-close-millionaire-tax-debt-cases>.

⁶ IRS Publication 3744-A (Rev. 4-2024) at 29.

This sharp increase in activity has placed an urgency on ensuring that the CPAR regime supports increased compliance and enforcement without being unnecessarily costly, complex, and burdensome for the IRS, taxpayers, and practitioners. Therefore, we urge Treasury and the IRS to take immediate action to remedy the outstanding issues discussed in this letter.

I. PUSH-OUT GENERAL

1. Revise Form 8986 to Include Date Push-out Statement Mailed by Passthrough Partner

Overview

A passthrough partner (generally a partnership, S corporation, non-grantor trust, or estate of a decedent) that receives a Form 8986, *Partner's Share of Adjustment(s) to Partnership-Related Item(s) (Required Under Sections 6226 and 6227)*, must either push out the adjustments reflected on the form or pay an imputed underpayment on them.⁷

If the passthrough partner chooses to push out adjustments, it must furnish Forms 8986 to its partners no later than the extended due date of the source partnership's adjustment year return. On Form 8986, Part II, Item G, the passthrough partner must enter the date on which the AAR or the audited partnership furnished Forms 8986 to its direct partners. A non-passthrough partner's tax year, which includes the date that Forms 8986 were furnished, is considered the reporting year, which is the year the non-passthrough partner must report and pay additional reporting year tax attributable to taking the adjustments into account.

The extended due date of the adjustment year return for the partnership filing the AAR or the audited partnership is reported on Form 8986, Part II, Item F. Passthrough partners must file Form 8985, *Pass-Through – Statement Transmittal/Partnership Adjustment Tracking Report (Required under Sections 6226 and 6227)* by the extended due date and if there is a further push out, file and furnish Forms 8986 to their partners. However, Form 8986 does not contain a field for the passthrough partner to enter the date on which it furnishes Forms 8986 to its partners.

Recommendation

The AICPA recommends that the IRS update Form 8986 to add a field for a passthrough partner to report the date it furnishes Forms 8986 to its partners.

Analysis

An upper-tier partner may not receive information timely from a passthrough partner causing the adjustments to reach the non-passthrough partners just prior to (or after) the non-passthrough partner's extended due date for the partner's return for the reporting year. It is not always clear where the breakdown in the information flow occurred since there is no field on Form 8986 to enter the date on which the passthrough partner furnished Forms 8986 to its partners. Adding a field to Form 8986 to capture the date the passthrough partner issues Forms 8986 to its partners

⁷ Treas. Reg. § 301.6241-1(a)(5); Treas. Reg. Sec. 301.6227-3(c)(2).

would improve accountability and emphasize the importance of furnishing the forms timely in a tiered structure.

2. Provide a Rule Regarding the Due Date of an Adjustment Year Return When Partnership Not in Existence

Overview

Determining the adjustment year is relevant to many aspects of the BBA regime, including the due date for passthrough partners to furnish push-out statements (Form 8986) if a push-out election is made. Per Treas. Reg. § 301.6226-3(e)(3)(ii) push-out statements must be furnished by the extended due date of the audited partnership's adjustment year. Additionally, the section 6227 regulations provide similar rules in the case of an AAR. To assist passthrough partners in complying with the push-out rules, Form 8986, Part II, Box E, lists the source partnership's adjustment year end and Part II, Box F, lists the extended due date for the source partnership's adjustment year.

Section 6225(d)(2) generally defines the adjustment year as the partnership taxable year in which the audit adjustments become final, either pursuant to a Notice of Final Partnership Adjustment (FPA) or a court decision. In the case of an AAR, the adjustment year is the partnership taxable year in which the source partnership files the AAR.⁸

The push out may occur after the partnership making the push-out election has terminated and it no longer has a partnership taxable year. This can occur in cases where there is a lengthy examination and/or litigation, when an AAR relates to a final partnership return, or if the partnership terminates after the return is filed and before the AAR is filed. In such cases, the entity is no longer a partnership for tax purposes at the time the adjustment becomes final, or the AAR is filed. Therefore, there is no "partnership" taxable year. In that situation it is unclear which year to show as the adjustment year on Form 8986, Part II, Box E, and Box F.

Recommendation

The AICPA recommends that Treasury and the IRS amend Treas. Reg. § 301.6226-3(e)(3)(ii) and Treas. Reg. § 301.6227-3(c) to provide a rule for when push-out statements are required to be furnished if the source partnership has terminated. Such a rule could deem the "adjustment year" to be the calendar year in which the audit adjustments become final, or the AAR is filed. Passthrough partners would have until September 15 of the year following such calendar year to pay or push out their share of the source partnership adjustments.

Analysis

The adjustment year of a partnership making a push-out election is relevant to determine the due date for passthrough partners to furnish push-out statements. Currently, the adjustment year is based on the partnership's taxable year in which the adjustments become final, or the AAR is filed.

⁸ Treas. Reg. § 301.6241-1(a)(1).

There is no clear adjustment year under the current rules if the partnership has terminated before those events occur.

Treasury and the IRS have the regulatory discretion to determine the date on which push-out statements must be furnished by upper-tier passthrough partners. Therefore, we suggest using their authority to provide a rule that applies in cases where the audit adjustment is final, or the AAR is filed, after the partnership has terminated or no longer in existence.

3. Do Not Require Partnerships that Push Out Adjustments to Compute an Imputed Underpayment

Overview

Treasury Reg. § 301.6227-1(a) provides that when a BBA partnership files an AAR, the partnership “must determine whether the adjustments requested in the AAR result in an imputed underpayment.” The instructions to the forms used for filing a BBA AAR (Form 1065-X, *Amended Return or Administrative Adjustment Request (AAR)*, and Form 8082, *Notice of Inconsistent Treatment or Administrative Adjustment Request (AAR)*) require the partnership to include an imputed underpayment calculation with the AAR. This requirement applies “even when the IU is zero or less than zero, or the adjustments don’t result in an IU” and even when the partnership elects to push out the AAR adjustments. Thus, even in a situation in which the partnership is not liable for the imputed underpayment because the push out election was made, the instructions to Form 1065-X and Form 8082 require the partnership to include a computation of the imputed underpayment with the AAR.

Recommendation

The AICPA recommends that the IRS revise the instructions to Form 1065-X and Form 8082 to provide that a partnership is only required to include a calculation of the imputed underpayment if it is paying the imputed underpayment.

Analysis

The purpose served by requiring an imputed underpayment computation with every BBA AAR is not evident from the instructions to Form 1065-X or Form 8082. The amount of an imputed underpayment, and thus its computation, is relevant in the AAR context only when the partnership is actually paying the imputed underpayment. Specifically, the regulations only contemplate payment and assessment of the imputed underpayment in the case of an adjustment taken into account under section 6227(b)(1) and Treas. Reg. § 301.6227-2(b), which apply only in instances where the partnership is making a payment of the imputed underpayment and is not electing to push out the adjustments to its partners. Section 6226(a) and Treas. Reg. § 301.6226-1(a) provide that if the partnership makes the election to push out the adjustments it isn’t liable for the imputed underpayment.⁹

⁹ Instructions to Form 8082.

If the partnership has elected to push out adjustments to its reviewed year partners, they must take into account such adjustments and pay any applicable tax. The rules governing the computation of the imputed underpayment typically result in an amount that exceeds the amount realistically anticipated to be paid, in the aggregate, by the partners with respect to such adjustments. Additionally, the imputed underpayment amount computed by the partnership has no bearing on the amount of tax the partners will calculate and ultimately pay on their own returns. Requiring the partnership to compute and report an imputed underpayment amount has no relevance to the partnership or its partners and only serves as an administrative burden and potential impediment to filing an AAR. Therefore, we suggest revising the instructions to Form 1065-X and Form 8082 to only require a partnership to include a calculation of the imputed underpayment if it is paying the imputed underpayment.

4. Allow Push-Out Elections at Any Time Before 45 Days After the Date the Final Partnership Adjustment is Mailed

Overview

Section 6226(a)(1) provides that a push-out election must be made “not later than 45 days after the date of the notice of final partnership adjustment.”

When a partnership representative agrees with adjustments and chooses to pay the imputed underpayment by signing a Notice of Proposed Partnership Adjustments (NOPPA), Form 14792, *Partnership Examination Changes, Imputed Underpayment Computation and Partnership Level Determination as to Penalties, Additions to Tax and Additional Amounts*, they waive the modification and FPA and agree to immediate assessment of the imputed underpayment and penalties.

Treasury and the IRS view issuance of the FPA as a necessary pre-requisite to making a push-out election under section 6226. This view was set forth in a proposal in the General Explanation of the Administrations Fiscal Year 2025 Revenue Proposals (“Greenbook”) to amend the Internal Revenue Code (IRC or “Code”) to allow a push-out election after the NOPPA is issued until 45 days after the FPA is mailed.¹⁰

Recommendation

The AICPA recommends that Treasury and the IRS issue guidance interpreting section 6226(a)(1) in a manner consistent with the statutory language to allow a push-out election at any time prior to 45 days after the date the FPA is mailed.

Analysis

The AICPA agrees that tax administration benefits when tax controversies are resolved in a timely manner. Therefore, the AICPA agrees with the Greenbook proposal which states that taxpayers should be permitted to make a push-out election even if they waive the FPA, which is one way to

¹⁰ General Explanation of the Administrations Fiscal Year 2025 Revenue Proposals, p. 174 (March 9, 2024) <https://home.treasury.gov/system/files/131/General-Explanations-FY2025.pdf>.

resolve a BBA audit more quickly. However, the AICPA does not agree that legislation is required to make this change. Based on the language in section 6226(b)(1), there is no requirement for issuance of an FPA before a push-out election can be made. The only mandatory date in the statute is the latest date for the push out election; there is no earliest date for making the election provided in the statute. Therefore, the IRS has authority under current law to allow partnership representatives to agree to adjustments upon issuance of the NOPPA, waive modification and the FPA, and make a push-out election.

5. Provide Guidance When There is Overwithholding Under Chapter 3 or Chapter 4

Overview

The regulations provide rules that coordinate the BBA payment and push-out rules with the withholding requirements imposed by chapter 3 and chapter 4. However, the regulations do not address certain situations, such as how a partnership and its partners can make a correction when the partnership has withheld too much tax as a result of a BBA adjustment.

Recommendation

The AICPA recommends that Treasury and the IRS provide guidance to partnerships and partners addressing situations where the partnership makes an adjustment resulting in the partnership withholding too much tax under chapter 3 or chapter 4. Such guidance may provide the partnership with the option of reporting in the current year the reduction to the amount subject to withholding, allowing the partnership to reduce its current year withholding liability.

Analysis

The regulations provide that a partnership that makes a push-out election with respect to an imputed underpayment must pay the amount of tax, if any, required to be withheld under chapter 3 or chapter 4, in accordance with Treas. Reg. § 301.6241-6(b)(4). Under Treas. Reg. § 301.6241-6(b)(4)(i), a partnership (or a passthrough partner) that elects to push out an adjustment subject to chapter 3 or 4 withholding must pay the amount of withholding tax (to the extent the IRS has not already collected tax attributable to the adjustment under chapter 3 or chapter 4). The withholding tax must be paid on or before the unextended due date of the adjustment year return, in the manner prescribed by the IRS in forms, instructions, and other guidance.

A reviewed year partner that is subject to withholding under Treas. Reg. § 301.6241-6(b)(4) must file an income tax return for the reporting year to report its additional reporting year tax and its share of any penalties, additions to tax, additional amounts, and interest (notwithstanding any U.S. filing exception that might apply to that foreign partner).

Although the regulations provide rules for additional withholding when the partnership pushes out an adjustment to an amount subject to chapter 3 or chapter 4 withholding, guidance is needed to address the steps to take when the amount subject to chapter 3 or chapter 4 withholding decreases and the partnership or passthrough partner withholds too much tax.

6. Simplify Rules for Issuing Multiple Push-Out Statements for Same Reviewed Year

Overview

A passthrough partner may hold interests in multiple lower-tier partnership investments and the lower tiers may also hold investments in multiple lower-tier partnerships. Therefore, a passthrough partner may receive multiple and in some cases hundreds of push-out statements for a single reviewed year. A passthrough partner that receives a Form 9986 must either push out the adjustments reflected on the form or pay an imputed underpayment on them.

A passthrough partner receiving Forms 9986 must file Form 9985. In addition, if the passthrough partner pushes out adjustments, it must file and furnish its own Forms 9986 to its partners. The current regulations may be read to require “one-for-one” reporting, meaning that the passthrough partner is required to issue a set of Forms 9986 for each Form 9986 received by the passthrough partner from lower-tier investments.

Recommendation

The AICPA recommends that Treasury and the IRS clarify the regulations to provide that a passthrough partner may aggregate multiple AAR push-out statements for a single reviewed year into a single push out statement (similar to the treatment on a Schedule K-1) and update the instructions to provide guidance on how a passthrough partner should reflect aggregated lower-tier Forms 9986.

Analysis

A pass-through partner may receive multiple Schedules K-1 each relating to the same tax year but each from a different lower-tier investment. When reporting items and information to its partners, the passthrough partner generally aggregates the items from its lower-tier investments and reports the aggregated information to its partners on a single Schedule K-1. When AARs are filed at those lower-tiers, the passthrough partner may receive multiple Forms 9986 relating to the same reviewed year, but each stemming from a different lower-tier AAR.

Example

Assume upper-tier partnership (UTP) has 8 partners. UTP receives 10 different Forms 9986 from lower-tier investments, each of which relates to the same reviewed year – tax year ending 12/31/2022. It is unclear if UTP must file 80 push-out statements (10 push-out statements to each of its 8 partners) or file 8 push-out statements (1 push-out statement to each partner reflecting the aggregate of the adjustments reported on the 10 Forms 9986 it received).

Having to file and furnish multiple Forms 9986 for a single reviewed year is administratively burdensome and unnecessary and inconsistent with long-standing, generally accepted principles of the partnership reporting regime. Therefore, we suggest that the IRS clarify that a passthrough

partner may aggregate adjustments received from multiple lower-tier Forms 8986 that relate to the same reviewed year and to provide related guidance in the instructions.

7. Provide Procedures for a Partnership Receiving Form 8986 after Termination

Overview

Currently, there is no guidance regarding how a BBA partnership which receives a Form 8986 pushes out adjustments if it has terminated under section 708(b)(1) and the IRS has not yet determined the passthrough partner has ceased to exist.

Recommendations

The AICPA recommends that Treasury and the IRS provide guidance on how a partnership that has terminated and subsequently receives a Form 8986 should push out the adjustments.

Analysis

The cease to exist rules under Treas. Reg. § 301.6241-3 provide guidance on how a partnership-partner which the IRS determines has ceased to exist takes into account partnership adjustments defined in Treas. Reg. § 301.6241-1(a)(6). However, if the IRS has not determined that a partnership-partner has ceased to exist there is not a prescribed way for a partnership-partner which has terminated under section 708(b)(1), to push the adjustments out to its partners.

II. PUSH OUT – NON-PASSTHROUGH PARTNER

1. Revise Form 8978 and Related Schedule A to Optimally Capture Adjustments

Overview

Currently, Form 8978, *Partner's Additional Reporting Year Tax*, and its accompanying Schedule A, serve a limited purpose. Partners report on Form 8978 adjustments from Form 8986 received from partnerships that elect to push out adjustments. Form 8978 also provides information for how those adjustments are taken into account to determine the correction amounts, interest and penalties for the reviewed year and intervening years.

The function of Form 8978 largely overlaps with existing income tax reporting, rendering it redundant. In addition, the form does not reflect numerous aspects of taking the adjustments into account, and the form instructions require the taxpayer to provide a significant amount of information in statements attached to the form, making the actual form mere surplusage when showing how many of the adjustments are taken into account.

Recommendation

The AICPA recommends that Treasury and the IRS revise Form 8978 and related Schedule A to more accurately reflect the information required by the current form instructions to be shown on accompanying statements.

Alternatively, we recommend that the current statement requirement be eliminated from the instructions and instead allow taxpayers to maintain records of the calculation of the additional reporting year tax to be provided to the IRS on examination, if requested.

Analysis

Form 8978 requires additional documentation that may be unnecessary if the relevant adjustments are reported elsewhere. Therefore, a reevaluation of the scope and content of Form 8978 is recommended to reduce the administrative burden by eliminating redundancy and streamlining partner reporting.

2. Do Not Require Forms to Address Treatment of Additional Reporting Year Tax in the Reporting Year Until Regulations Issued

Overview

A non-passthrough partner that receives a Form 8986 must take into account the adjustments on the partner's income tax return for the reporting year by reporting and paying any resulting tax on the reporting year return. However, neither the statute nor the regulations contemplate the interaction between the additional reporting year tax and the computation of chapter 1 tax in the reporting year. The IRS has used the forms and instructions to provide new rules to account for the additional reporting year tax when computing chapter 1 income tax for the reporting year. However, the forms and instructions are subject to change without notice or comment from the public.

Specifically, the instructions to Form 6251, *Alternative Minimum Tax — Individuals*, for calculating alternative minimum tax (AMT), and the credit ordering instructions in Form 3800, *General Business Credit*, and Form 1116, *Foreign Tax Credit* provide an ordering framework for taxpayers that have an additional reporting year tax when computing either AMT or applying credits to the current year income tax. For example, in the case of AMT, the instructions to the form incorporate the additional reporting year tax into the regular tax for purposes of section 55. However, neither the statute nor regulations contemplate the interaction of additional reporting year tax under section 6226 or any element of computing current year tax, including computation of AMT under section 55.¹¹

¹¹ <https://www.taxnotes.com/tax-notes-today-federal/audits/unexpected-coordination-partnership-audit-rules-and-specific-irs-forms/2024/04/03/7jhc?highlight=ossie%20borosh>.

Recommendation

The AICPA recommends that Treasury and the IRS publish regulations to address how taxpayers should treat the additional reporting year tax when computing their chapter 1 income tax liability for the reporting year.

We also recommend that until such regulations are finalized, the additional reporting year tax should not be included in any part of the computation of chapter 1 tax for the reporting year.

Analysis

Section 6226(b)(1) provides that in the case of a non-passthrough partner each partner's tax imposed by chapter 1 for the reporting year is adjusted by the additional reporting year tax. However, neither the statute nor regulations contemplate the interaction of the additional reporting year tax and the computation of chapter 1 tax for the reporting year.

Various IRS forms and instructions require the additional reporting year tax to be taken into account when computing chapter 1 tax for the reporting year return, including how the additional reporting year tax factors into the computation of AMT for individuals and the application of credits applied against tax imposed by chapter 1. The operation of these rules can significantly impact the tax liability of a non-passthrough partner. However, these forms and instructions were developed without public input and used a form of guidance that does not have the force and effect of law.

The AICPA is also concerned about the legal basis for certain form rules regarding the interaction of the additional reporting year tax and the computation of chapter 1 tax (e.g., the computation of reporting year AMT). Therefore, if Treasury and the IRS believe that the additional reporting year tax affects the computation of the reporting year tax, we urge them to publish regulations, which are subject to notice and comment. We also urge the IRS to remove the additional reporting year tax from computation of the reporting year chapter 1 tax on all forms unless and until such rules are prescribed by final regulations.

3. Provide Procedures for Deceased Person or Entity Receiving Form 8986 When No Longer in Existence

Overview

Currently, there is no guidance for when a deceased person, or an entity which no longer exists, is furnished with a Form 8986 for a reporting year had the individual not died, or the entity continues to exist.

Recommendation

The AICPA recommends that Treasury and the IRS clarify how a deceased person or a nonexistent non-passthrough entity takes into account adjustments reflected on a Form 8986. Such guidance

may provide the non-passthrough partner should (but is not required to) file an amended return for the reviewed year to take the adjustments from the Form 8986 into account.

Analysis

Under Treas. Reg. § 301.6226-3(a), the tax imposed for each reviewed year partner, for the taxable year that includes the date a Form 8986 was furnished to the partner (the reporting year), is increased or decreased by the additional reporting year tax determined in accordance with Treas. Reg. § 301.6226-3(b). However, in the case of an individual taxpayer who has died, or an entity which no longer exists, the Form 8986 recipient may have no taxable year that includes the date the Form 8986 was furnished and, therefore, there is no reporting year.

There is no requirement for a taxpayer to file an income tax return for a year after the year their final income tax return is required to be filed. In addition, taxpayers are allowed, but not required, to file amended returns.

III. CHANGES TO REGULATIONS

1. Clarify Treasury Regulation § 301.9100-2

Overview

Treasury Reg. § 301.9100-2 provides automatic relief for certain late elections if corrective action is taken. In some cases, corrective action is taken by filing an amended return. BBA partnerships generally are not permitted to file amended returns, except in limited circumstances as provided by the Treasury and the IRS.¹² Therefore, it is unclear how a BBA partnership is to take the required corrective action to obtain relief under Treas. Reg. § 301.9100-2.

Recommendation

The AICPA recommends that Treasury and the IRS clarify Treas. Reg. § 301.9100-2, regarding automatic 9100 relief, to provide that BBA partnerships are permitted to take corrective action on an amended return.

Alternatively, we recommend that Treasury and the IRS amend the regulations to permit BBA partnerships to take the required corrective action on an AAR, except to allow an amended return to be filed for corrective action that does not require any change to amounts on the originally filed Form 1065 and Schedules K-1/K-2/K-3 (e.g., in cases where the only corrective action needed is to attach an inadvertently omitted section 754 election statement without other adjustments required to the original Form 1065).

Alternatively, we recommend that Treasury and the IRS amend the regulations to allow the filing of an AAR that does not include an IU and that does not include Forms 8986.

¹² Section 6031(b) and section 6227.

Analysis

Filing AARs is complicated and burdensome, especially in tiered entities. In addition, e-file software will not accept as valid, the answer “No” on Form 8082 related to the following questions:

- Part I, Line 1, item B: “Do the adjustments on the AAR result in an imputed underpayment (IU) for the reviewed year?”
- Part I, Line 1, item C1: “Is the partnership making an election under section 6227(b)(2) to have the adjustments taken into account by the reviewed year partners?”
- Part I, Line 1, item C2: “Are there also adjustments that do not result in an IU?”

Accordingly, an electronically filed AAR, cannot reflect that there is no imputed underpayment, and no push-out statements are being filed (e.g., when the sole reason for filing an AAR is that a form or other attachment was inadvertently omitted from the originally filed Form 1065). Allowing corrective action for automatic relief under Treas. Reg. § 1.9100-2 on an amended return, in the case of a BBA partnership, would significantly reduce the burden and complexity for the taxpayer and the IRS.

2. Imputed Underpayment

a. Allow Treatment of an Adjustment as Zero when Calculating Imputed Underpayment

Overview

Treasury Reg. § 301.6225-1(b)(4) provides that if the effect of one partnership adjustment is reflected in one or more other partnership adjustments, the IRS may “treat the one adjustment as zero” for purposes of calculating the imputed underpayment. It is not clear whether this rule allows for multiple related adjustments to be treated as zero.

Recommendation

The AICPA recommends that Treasury and the IRS clarify Treas. Reg. § 301.6225-1(b)(4) to state that multiple adjustments may be treated as zero for purposes of calculating the imputed underpayment.

Analysis

The preamble to the August 2018 proposed regulations, which includes the original form of Treas. Reg. § 301.6225-1(b)(4), describes the intent of the provision as follows:

Proposed §301.6225-1(b) addresses the calculation of the imputed underpayment. Due to the number of adjustments that could be made based on the definition of partnership-related item, the IRS will need to address circumstances in which multiple partnership-related items are adjusted to address a single issue or transaction in the administrative proceeding. Adjusting multiple partnership-related items that relate to the same issue or transaction

could result in an imputed underpayment that double-counts some of the adjustments even though, if the partnership and partners had properly reported the item, one or more adjustments would have been subsumed by another item. To prevent double-counting the individual adjustments as inputs into the imputed underpayment, proposed §301.6225-1(b)(4) provides that the IRS may treat adjustments that would otherwise be double-counted as zero for purposes of determining the imputed underpayment.

The original provision from the August 2018 proposed regulations reads as follows:

(4) Treatment of adjustment as zero for purposes of calculating the imputed underpayment. If the effect of a partnership adjustment under chapter 1 of subtitle A of the Internal Revenue Code (Code) to any person is reflected in another adjustment taken into account under this section, the IRS may treat an adjustment as zero solely for purposes of calculating the imputed underpayment.

The proposed language was changed in the final regulations. Per the preamble to the final regulations, the change was intended to expand the situations in which the IRS may treat an adjustment as zero (e.g., when the effect of an adjustment is reflected in an adjustment to an item treated inconsistently, or for adjustments outside of chapter 1). However, the reformulated provision can be read, by its reference to treating ‘the one adjustment’ as zero, as only allowing one of several related adjustments to be treated as zero, allowing multiple other adjustments to be included in the calculation. This could result in an imputed underpayment that double-counts some of the adjustments, which is the inequity that the provision originally set out to correct.

As a result, we suggest that the final regulations be clarified to state that the IRS may treat ‘one or more’ of the related adjustments as zero for purposes of calculating the imputed underpayment, to the extent necessary to prevent double-counting of adjustments.

b. Exclude Adjustments Related to Non-Income Items from Imputed Underpayment

Overview

Under Treas. Reg. § 301.6225-1, adjustments to non-income items must be taken into account as adjustments in determining an imputed underpayment. Non-income adjustments are generally treated as positive adjustments for this purpose. In many cases, inclusion of non-income items in the calculation of the imputed underpayment results in a tax liability when one would not normally exist or a tax liability that is much larger than would result under the application of general income tax principles.

Recommendation

The AICPA recommends that Treasury and the IRS revise Treas. Reg. § 301.6225-1 to provide for the exclusion of adjustments to non-income items in determining the imputed underpayment when there would be no current tax impact under substantive provisions of the tax law.

Analysis

Non-income items are partnership related items under section 6241(2)(B)(i). Section 6225(b) provides that the imputed underpayment is determined by *appropriately netting* all partnership adjustments with respect to the reviewed year. Treasury Reg. § 301.6225-1 takes the position that all non-income items must be considered in netting of partnership adjustments to determine the imputed underpayment. For example, the IRS imputed underpayment computation includes any adjustment to capital accounts regardless of whether a recognition event has occurred during the tax year that would make the capital account relevant. While Treas. Reg. § 301.6225-1(b)(4) provides the IRS with discretion to treat an adjustment as zero if it has a duplicate effect as another adjustment, it does not mandate that the IRS exercise its discretion and does not address situations where the non-income item is not duplicative of another adjustment.

The AICPA recognizes that comments were submitted on this issue in the development of the regulations. However, actual experience with the implementation of the provisions illustrates the unfairness and inaccuracy of the rule as drafted. Through the enactment of the new procedural rules, Congress did not intend to impose a significantly greater tax than would have been required under the substantive provisions of the law. In the statutory language of section 6225, Congress gave the Treasury the flexibility to promulgate rules requiring netting as appropriate. The IRS' position that all adjustments to all partnership related items must be accounted for in the computation of the imputed underpayment, arguably reads "appropriately netting" out of the statute. In addition, inclusion of all non-income items is not required under the statute in appropriately determining the imputed underpayment.

c. Include Net Negative Adjustments to Credits in Computation of Imputed Underpayment Under Section 301.6225-1

Overview

Treasury Reg. § 301.6225-1(d)(2)(ii) provides that a negative adjustment includes an increase in an item of credit. Under Treas. Reg. § 301.6225-1(e)(3)(ii), a net negative adjustment to a credit is treated as an adjustment that does not result in an imputed underpayment unless the IRS determines that such net negative adjustment to an item of credit should be taken into account as a decrease to the imputed underpayment in accordance with Treas. Reg. § 301.6225-1(b)(1)(v).

Recommendation

The AICPA recommends that Treasury and the IRS amend the regulations regarding determination of the imputed underpayment under Treas. Reg. § 301.6225-1 to always include net negative adjustments to credits in the computation of the imputed underpayment.

Analysis

The regulations provide the IRS with the discretion to include net negative adjustments to credits in the imputed underpayment computation. However, the Technical Explanation of the Revenue Provisions of the House Amendment to the Senate Amendment to H.R. 1625, dated March 22,

2018, (“JCX-6-18”) provides on page 40 that “Adjustments to credits are separately determined and netted as appropriate. *Adjustments to credits are not multiplied by the tax rate, but rather, adjustments to items of credit are taken into account as an increase or decrease in determining the amount of the imputed underpayment*” (emphasis added). This explanation indicates that the imputed underpayment can be decreased by adjustments to credits. Additionally, The General Explanation of Tax Legislation Enacted in 2015, dated March 2016, (p. 63 JCS-1-16) explains the determination of the imputed underpayment amount and provides: “Any adjustments to items of credit are taken into account as an increase or decrease, as the case may be, in the figure resulting from this multiplication [of the adjustments by the highest rate].” The technical explanation of the determination of the imputed underpayment provides for adjustments to items of credit which may decrease the imputed underpayment to be taken into account.

Based on the technical explanations in JCX-6-18 and JCS-1-16 it does not appear that Congress intended to limit the inclusion of net negative adjustments in the computation of the imputed underpayment. Therefore, we request that the regulations be revised to allow negative adjustments to credits to be taken into account in computing the imputed underpayment.

3. Powers of Attorney

a. Revise Internal Revenue Manual 4.31.9.7.10 to Require a Partner to Sign the Power of Attorney for a BBA Partnership

Overview

Section 6221(a) provides that any adjustment to a partnership-related item shall be determined, and any tax attributable thereto shall be assessed and collected, and the applicability of any penalty, addition to tax, or additional amount which relates to an adjustment to any such item shall be determined, at the partnership level, except as otherwise provided in subchapter C of chapter 63 of the Code (BBA). Therefore, for purposes of a BBA audit the partnership is the taxpayer.

Under section 6223(a) the partnership representative has sole responsibility to act on behalf of the partnership with respect to BBA.

Title 31 United States Code § 330 regulates practice before the IRS. While the term “practice” has not been defined precisely, *Loving v. Internal Revenue Service*,¹³ held that practice does not include tax return preparation not otherwise performed by someone who is a lawyer, CPA, or enrolled agent already covered by the statute. In addition, the court in *Loving* described practice as follows:

Although the exact scope of “practice before” a court or agency varies depending on the context, to “practice before” a court or agency ordinarily refers to practice during an investigation, adversarial hearing, or other adjudicative proceeding.

Under this reasoning, *Loving v. Internal Revenue Service* states that practice regulated under 31 U.S.C. § 330 includes representation in an IRS audit.

¹³ *Loving v. Internal Revenue Service*, 742 F.3d 1013 (D.C. Cir. 2014).

Form 2848, *Power of Attorney and Declaration of Representative* is used to authorize a person to represent the taxpayer before the IRS.

Internal Revenue Manual (IRM) 4.31.9.7.10(2) requires that in the case of a BBA audit, the partnership representative or designated individual of a partnership representative must sign Form 2848, *Power of Attorney and Declaration of Representative*. We understand that it is the view of the IRS that since the partnership representative has the sole authority under section 6223 to act on behalf of the partnership with respect to the BBA provisions of the Code, the person represented by a Form 2848 representative is the partnership representative. Under this view, the partnership representative (or designated individual in the case of an entity partnership representative) is the proper person to sign Form 2848 in the case of a BBA audit. The instructions to Form 2848 are consistent with the IRM.

In all non-BBA matters, the instructions to Form 2848 provide the following in the case of a partnership:

“All partners must sign and enter their exact titles. If one partner is authorized to act in the name of the partnership, only that partner is required to sign and enter his or her title. A partner is authorized to act in the name of the partnership if, under state law, the partner has authority to bind the partnership. A copy of such authorization must be attached.”

Recommendation

The AICPA recommends that Treasury and the IRS update IRM 4.31.9.7.10 to provide that regarding Form 2848, for a BBA matter, the general rules for signature with respect to a partnership apply.

Analysis

Representation of a taxpayer before the IRS, including in an examination, is practice before the IRS regulated by Title 31 United States Code § 330. The BBA does not change this result. While section 6223 assigns responsibility to act on behalf of the partnership with respect to the BBA, it does not provide the partnership representative with authority outside of subchapter C of chapter 63 of Title 26. Therefore, section 6223 does not supplant or change the rules under Title 31, specifically Title 31 United States Code § 330.

The BBA does not require the partnership representative to be a partner of the partnership. If the partnership representative is not a partner, section 6103(e) does not apply to permit the IRS to disclose partnership information to the partnership representative. Unless another provision under section 6103 applies, it is unclear how the IRS can disclose partnership information to a non-partner-partnership representative, or how a non-partner-partnership representative has the authority to consent to IRS disclosure of the partnership’s information to the representative identified on Form 2848.

Additionally, section 6223 does not make the partnership representative the taxpayer subject to the BBA audit. Because Form 2848 authorizes a person to represent a taxpayer who is under audit (as

well as authorize the IRS to disclose taxpayer information to that representative), a person authorized to act in the name of the partnership for all purposes should sign Form 2848. The partnership representative under section 6223 is not that person and therefore is not the taxpayer represented in a BBA audit.

Accordingly, we suggest that the IRM and Form 2848 instructions be modified to state that the person being represented in the BBA audit is the partnership and the person signing the Form 2848 as the taxpayer is a person who meets the general instructions for a person who can sign a Form 2848 for a partnership.

b. Remove Requirement in Internal Revenue Manual 4.31.9.7.10(3) for New Power of Attorney When Partnership Representative Changes

Overview

IRM 4.31.9.7.10(3) provides that a new Form 2848 is needed if the partnership representative changes. However, section 301.6223-2(b) states that actions of a partnership representative who resigns or whose designation is revoked prior to resignation or revocation are still valid.

Recommendation

The AICPA recommends that Treasury and the IRS revise IRM 4.31.9.7.10(3) to provide that a new Form 2848 is not required if the partnership representative resigns, or their designation is revoked.

Analysis

To align IRM 4.31.9.7.10(3) with section 301.6223-2(b), we suggest updating the IRM 4.31.9.7.10(3) to indicate that it is not necessary to file a new Form 2848 if the partnership representative resigns or their designation is revoked.

4. Provide Coordination Rules to Eliminate Double Taxation Under Chapter 1 and Chapter 2 (Self Employed Contributions Act Tax)

Overview

Treasury Reg. § 301.6241-6 provides guidance on the coordination with other chapters, specifically chapter 2, 2A, 3 and 4 of the Code. The regulation provides that to the extent an adjustment is made for purposes of chapter 1 and is relevant in determining the tax imposed under a chapter of the Code other than chapter 1, such adjustment or determination must be taken into account for purposes of determining such tax. The regulations provide specific guidance with respect to taxes determined under other chapters to ensure that the same adjustment is not taxed twice. Similar guidance does not exist for partnership adjustments that are made under subchapter C of chapter 63 for purposes of chapter 1 tax and are relevant in determining tax under chapter 2. As a result, there are situations in which it appears conceivable the same partnership adjustment could be taxed by the IRS under chapter 1 and again under chapter 2.

Recommendation

The AICPA recommends that Treasury and the IRS amend Treas. Reg. § 301.6241-6 and Treas. Reg. § 301.6225-1 to provide coordination rules for taxes collected under chapter 2. The coordination rules should provide that the IRS will not collect tax twice with respect to the same adjustment when a partnership has paid the imputed underpayment on the adjustment, or the individual has paid chapter 2 tax with respect to the adjustment.

Analysis

Example (Double Taxation under Chapter 1 and Chapter 2 for the Same Adjustment):

The IRS is auditing a BBA partnership and determines that the only partnership adjustment is to line 14, net earnings from self-employment, of \$1,000,000. The IRS assesses an imputed underpayment on the partnership adjustment equal to \$370,000. The partnership pays the imputed underpayment.

The current regulations provide that since the adjustment is relevant in determining tax imposed under chapter 2, the adjustment should also be taken into account for purposes of determining the chapter 2 tax and the IRS would assess self-employment tax to each partner based on their share of the adjustment to Sch K/K-1, line 14. The partnership has already paid a tax with respect to the \$1,000,000 when it paid the imputed underpayment and further assessing chapter 2 tax at the partner level results in double taxation of the same adjustment.

There is specific guidance for other chapters under the regulations which ensure double taxation of the same adjustment does not occur. For example, the coordination rules for chapter 3 and 4 under Treas. Reg. § 301.6241-6(b)(3) provide that if the partnership pays an imputed underpayment and the total netted partnership adjustment includes a partnership adjustment to an amount subject to withholding, the partnership is treated as having paid (at the time that the imputed underpayment is paid) the amount required to be withheld with respect to that partnership adjustment under chapter 3 or chapter 4. Similarly, Treas. Reg. § 301.6225-1(b)(3) provides that a partnership adjustment is disregarded for purposes of calculating the imputed underpayment under paragraph (b) of this section to the extent that the IRS has collected the tax required to be withheld under chapter 3 or chapter 4 which is attributable to the partnership adjustment. These coordination rules ensure that tax is not collected twice on the same adjustment.

IV. PROCESS CHANGES

1. Limit Electronic Submission Through the IRS Web Portal to Modification-Related Information

Overview

Many aspects of the BBA have proved to be complicated and an administrative burden for both taxpayers and the IRS. The overall BBA audit process is lengthy, and its rules are unfamiliar to

taxpayers and IRS personnel. The IRS must ensure that processes it puts in place do not unnecessarily add to this complexity and burden.

Certain information is required to be submitted to the IRS electronically through the BBA web portal (the BBA Online Form Submission Service or OFSS).¹⁴ However, in order to transmit information through the portal, the submitter must obtain secure access to the portal by registering for ID.me, creating a personal identification number (PIN), and requesting a unique transmittal control code (TCC). This complex process takes a considerable amount of time and effort to complete. Additionally, document formatting requirements and specifications can be complicated, and the system has many unique rules and features that are not user-friendly.

The IRS created the BBA web portal to obtain certain information from taxpayers in electronic format, rather than obtaining the information on paper and manually entering the data into IRS systems. However, we suggest that the IRS consider whether the number of forms currently required to be submitted through the portal can be reduced, potentially reducing the number of taxpayers who are required to engage with this burdensome and user-unfriendly system. The BBA web portal should not be required if there is another, more well-established and proven system for electronically submitting the information or if the information is required on a single, short form that does not contain large amounts of data.

Recommendation

The AICPA recommends that the IRS require only the forms and attachments necessary to request modification to be submitted through OFSS.

Additionally, we recommend that the IRS permit all other forms currently required to be submitted through the BBA web portal to be submitted to the IRS through other less burdensome methods.

Analysis

1. BBA Information Required to be Submitted Electronically

The following forms are currently required to be submitted to the IRS electronically through OFSS:

Modification-related Forms

- Form 8980, *Partnership Request for Modification of Imputed Underpayments Under IRC Section 6225(c)*
- Form 8982, *Affidavit for Partner Modification Amended Return Under IRC Section 6225(c)(2)(A) or Partner Alternative Procedure Under IRC Section 6225(c)(2)(B)*

¹⁴ <https://www.irs.gov/businesses/partnerships/electronic-submission-of-forms-by-audited-bba-partnerships-and-their-pass-through-partners>.

- Form 8983, *Certification of Partner Tax-Exempt Status for Modification Under IRC Section 6225(c)(3)*
- Form 15028, *Certification of Publicly Traded Partnership to Notify Specified Partners and Qualified Relevant Partners for Approved Modifications Under IRC Section 6225(c)(5)*
- Form 15027, *Partnership Summary of Approved Modifications and the Imputed Underpayments*
- Form 8984, *Extension of the Taxpayer Modification Submission Period Under Section 6225(c)(7)*

Push-Out Forms

- Form 8985, *Pass-Through — Statement Transmittal / Partnership Adjustment Tracking Report (Required Under Sections 6226 and 6227)*
- Form 8986, *Partner's Share of Adjustment(s) to Partnership-Related Item(s) (Required Under Sections 6226 and 6227)*

Other Forms

- Form 8981, *Waiver of the Period Under IRC Section 6231(b)(2)(A) and Expiration of the Period for Modification Submissions Under IRC Section 6225(c)(7)*
- Form 14726, *Waiver of the Notice of Final Partnership Adjustment (FPA)*
- Form 8988, *Election for Alternative to Payment of the Imputed Underpayment - IRC Section 6226*
- Form 8989, *Request to Revoke the Election for Alternative to Payment of the Imputed Underpayment*

The rules for the type of signature required on the forms are contained in a complex matrix on the IRS website.

In addition to the above forms, an audited BBA partnership that elects to push out and a passthrough partner that receives a Form 8986 must also request a BBA push-out tracking number by submitting a request through OFSS.

2. *Obtaining Secure Access to Submit Forms Electronically*

As a prerequisite to the submission of forms into OFSS, the submitter must register with ID.me. While this system is being used for secure identification for many IRS applications, many individuals have been unable to register for the system. Once registered with ID.me, the individual must create an IRS e-services PIN and apply for a Partnership Bipartisan Budget Act (PBBA) TCC to be recognized by OFSS.

Registration for ID.me and obtaining a TCC is not instantaneous. In addition, OFSS can be temperamental causing the submission of information to take longer than anticipated. Therefore, taxpayers must start the process early to ensure they have enough time to submit documents through OFSS before the relevant deadline.

3. Who Must Interact with the Electronic Submission Process

The IRS recommends that a partnership should have at least two people who are able to submit information through the BBA web portal, which necessitates that each of them endure the lengthy registration process.

The audited BBA partnership is not the only taxpayer required to interact with this arcane, burdensome electronic system. Direct and indirect partners of a partnership who are passthrough entities will also be required to obtain secure access to submit information through the BBA web portal if they are the recipient of a Form 8986 push-out statement from an audited partnership or from another passthrough partner. These partners may not be aware that an audit has been conducted, may have never engaged with the BBA web portal, and may be unaware of the many steps required to timely complete their obligation to file the Form 8985, and potential Forms 8986, through the BBA web portal.

4. The Process is Complex

The following IRS flow chart of the process illustrates the complexity and burden of having to submit information electronically through the BBA web portal:

PBBA USER EXPERIENCE - FROM REGISTRATION TO OFSS SUBMISSION STATUS

Registration, PIN selection, and PBBA TCC Application			Download, complete, and sign forms		Upload and Submit forms in OFSS Portal, verify Submission Status (Accepted or Rejected)				
<p>Step 1: Register for online access*</p> <p>Individual Registers for online access</p> <p>ALL Contacts to be included on PBBA TCC Application must complete online access registration before the TCC application is submitted and a TCC is assigned. Contacts who plan to sign PBBA Forms, will need to create a PIN.</p>	<p>Step 2: Create an e-Services PIN and Apply for a PBBA TCC*</p> <p>Submit an Application for PBBA TCC for Entity to upload PBBA audit forms</p> <p>PIN is self-selected. Responsible Official uses PIN to sign the PBBA TCC Application. If you are not prompted to create a PIN, select "Modify PIN" from the menu to create or update your PIN.</p>	<p>PBBA TCC generated (User logs out until ready to submit forms)</p> <p>When application is approved, TCC can be obtained on-screen</p> <p>PBBA TCC will be confirmed by mail (Letter 6295C). Please wait 3 days before submitting forms.</p>	<p>Download Fillable Forms from IRS.gov site ONLY</p> <p>If problem ... Contact eSubmit Help Desk at 813-367-8037 or LBLBBA.eSubmit@irs.gov</p> <p>NOTE: Tax Law Questions are not handled by eSubmit Help Desk.</p>	<p>Complete Forms Offline Enter PIN for eSignature Complete any required Attachments</p> <p>Determine which forms must be uploaded in "fillable format" and which are scanned</p> <p>"Fillable format" means that the red outlines and blue boxes are visible. Some forms require scanned Signature page(s). Use IRS.gov forms ONLY.</p>	<p>Step 3: Use the BBA Online Form Submission Service (OFSS)*</p> <p>Select Link to OFSS Portal to Upload and Submit PBBA audit Forms and Attachments</p> <p>Only individuals included on a PBBA TCC application have access to OFSS portal. OFSS portal is also used to request tracking number(s). Tracking number(s) must be requested if submitting Forms 8985 and 8986.</p>	<p>Upload Forms in OFSS Portal and Submit</p> <p>Enter TCC and ACN in OFSS portal prior to forms upload</p> <p>OFSS Portal validates TCC before allowing access to form upload. Validations at upload are size of files, virus detection, file names, and that required forms are included based on selection.</p>	<p>Receive On-screen Submission Acknowledgement ("Receipt ID"). Keep Receipt ID.</p> <p>Receipt ID only indicates that the IRS has received the submission.</p> <p>Filer MUST check status of submission - either accepted or rejected using the Receipt ID provided.</p>	<p>Click on "Select Submission Status" to Verify Acceptance/ Rejection Status</p> <p>If status displays "processing" beyond 24 hours, contact Help Desk at 813-367-8037 or LBLBBA.eSubmit@irs.gov.</p> <p>If Filer needs to submit additional forms, they can submit in the same session by going "Home" or back to "Upload Forms" after receiving a Receipt ID.</p>	<p>If Forms accepted, Filer is done. If Forms are rejected - Filer must fix, Login, and resubmit</p> <p>If problem ... Contact eSubmit Help Desk at 813-367-8037 or LBLBBA.eSubmit@irs.gov</p> <p>Rejection message informs Filer why rejected and what Filer needs to do to "perfect" submission. Complete file must be resubmitted before due date.</p>

*refer to Steps 1, 2, and 3 outlined at www.irs.gov/BBAeSubmit

5. Only Modification Forms Should be Submitted through OFSS

A partnership filing an AAR, files its push-out statements electronically through the modernized e-file system (MeF). Passthrough partners file AAR-related push-out documents by faxing them

to the IRS. Examination forms, other than those listed in Section 1, are submitted directly to the revenue agent or to personnel from the Independent Office of Appeals.

The IRS's document upload tool (DUT) does not require taxpayers to obtain secure access to submit information to the IRS through the tool.

A request for modification includes a significant amount of data, such as information about upper tier partners, including allocations. While certain modification-related attachments are scanned into the system as a portable document format (PDF), use of an electronic submission system such as OFSS will negate IRS employees from having to do manual data entry of significant amounts of information. Accordingly, our recommendation does not take issue, in concept, with electronic submission of the modification request and related documents through OFSS.

However, many BBA partnerships subject to audit will not file a modification request. A partnership that wants a speedy path to court or to make the push-out election can file Form 8981 to waive the 270-day period before the IRS can issue a notice of FPA and waive modification. However, this form, which contains little information outside of the identifying information, and a signature, must be submitted through OFSS. Therefore, to solely submit Form 8981 a taxpayer must engage with OFSS, when similar forms are routinely submitted to the IRS through other, far less burdensome means. The IRS's document upload tool (DUT) does not require taxpayers to obtain secure access to submit information to the IRS and would be a better alternative to submit the form, or the form could be mailed or e-faxed to the IRS BBA Unit.

Similarly, a partnership that does not request modification, but that merely wants to waive an FPA or elect (or revoke) a push-out election, must register with ID.me, select a PIN, obtain a TCC and engage with the burdensome electronic system that is OFSS, when similar forms are submitted to the IRS through less burdensome means like the DUT or mail.

Additionally, it is unclear why push-out forms (Form 8985 and Form 8986) which can be submitted through MeF by an AAR partnership cannot be submitted through MeF by an audited BBA partnership or a passthrough partner receiving a Form 8986 from an AAR partnership or an audited BBA partnership.

It is not necessary to require the submission of requests for a push-out tracking number through OFSS. There should be a less burdensome means for the IRS to send such a number to the audited BBA partnership and the passthrough partners. If these forms were allowed to be submitted through MeF, working with software vendors, a system could be developed so software used to prepare and file these forms could automatically generate these numbers.

2. Improve Accessibility of BBA Related Materials

a. Enhance Accessibility of BBA Related Forms

Overview

The IRS has developed PDF fillable forms, which can be accessed on the IRS website, for use in the BBA process. However, not all taxpayers can easily access the forms in this format.

Recommendation

The AICPA recommends that the IRS provide downloadable, non-fillable PDF versions of the BBA centralized partnership audit regime related forms on the IRS website.

Analysis

Many practitioners encounter an error message when trying to access certain forms related to the BBA centralized partnership audit regime. The IRS recently included an email address to contact the BBA group for assistance in accessing the forms. However, the email does not address accessibility for non-audited partnerships and their advisors who need to access forms for the push out of adjustments from a partnership that filed an AAR. Also, the email box will not provide immediate access to forms for taxpayers who need to review forms before filing.

By providing downloadable, non-fillable PDF versions of the forms on the IRS website, public access and use would significantly improve.

b. Make BBA Audit Letters and Job Aids Publicly Available

Overview

Currently, audit letters and job aids and other training related to the BBA are not available to the public.

Recommendation

The AICPA recommends that all letters and training materials be made publicly available. Specifically, the AICPA recommends that copies of the following BBA audit letters be made publicly available on the IRS website:

- Notice of Selection for Examination: Letter 2205-D
- Notice of Administrative Proceeding (NAP): Letters 5893 and 5893-A
- Summary Report and Appeals package (5891, 5895, 14791, 886-A)
- Notice of Proposed Partnership Adjustments (NOPPA or PPA) (5892, 5892-A, and 14792)
- Notice of Final Partnership Adjustments (FPA) (5933, 5933-A, and 15027)

Additionally, the AICPA recommends that the IRS publish the following job aids identified in the Internal Revenue Manual (IRM) for public access. Additionally, all further BBA job aids and other training materials should be made available for public access:

- Form 15260, *Determination of Pass-through Audit Regime Check Sheet*
- Form 15261, *Investor Level Statute Control (ILSC) Pass-through Procedures Check Sheet*
- Form 15262, *Bipartisan Budget Act (BBA) Partnership Procedures Check Sheet*
- Form 15263, *Bipartisan Budget Act (BBA) Partnership Chapter 2/2A Relevant Partner Determination*
- Form 15264, *Bipartisan Budget Act (BBA) Chapter 2/2A Linkage Check Sheet*
- Form 15271, *Bipartisan Budget Act (BBA) Partnership Adjustment Statute Extension Check Sheet*
- Form 8979, *Partnership Representative Revocation, Designation, and Resignation validation check sheet*
- PR Notices Summary Grid job aid
- Form 872-M, *Consent to Extend the Time to Make Partnership Adjustments*
- Imputed Underpayment Amount (IUA) Calculator which is used by the Tax Computation Specialists (referenced in IRM 4.31.9.9.2.3(1) (10-29-2021), Second Step in Computing the IU)
- IUA Workbook (referenced in IRM 4.31.9.9.3.2(2))

Analysis

To promote transparency and enhance public understanding of the BBA audit process, including enhancing the visibility and accessibility of the BBA-related audit letters and job aids, we suggest that the IRS make them available for public access on the IRS website. After the enactment of the Tax Cuts and Jobs Act,¹⁵ the IRS announced that training materials would be made publicly available, and that filing Freedom of Information Requests would not be necessary to obtain training materials. Making such materials public facilitates the shared understanding of how the law is being implemented and provides greater transparency and identification of issues. Given the complexities inherent in the BBA rules, proactively making these materials available to the public would improve the understanding of the administration of the rules by taxpayers and practitioners.

3. Provide Guidance for Making Deposits Under Section 6603

Overview

Section 6603 allows taxpayers to make a deposit to stop the accrual of interest while the relevant parties work toward resolution of a tax controversy. Section 6233(c) regarding deposits to suspend interest, provides “for rules allowing deposits to suspend running of interest on potential underpayments, see section 6603.” The BBA website contains instructions for “terminal partners” to make deposits under section 6603. However, no rules have been released for a partnership to make a deposit under section 6603.

¹⁵ P.L. 115-97.

In addition, under section 6226(a), a partnership is required to make a push-out election no later than 45 days after the date of the FPA. Section 6226(a) also provides that if the push out election is made the partnership is no longer liable for the imputed underpayment.

Treasury and the IRS view the FPA as a prerequisite to the push out election. Therefore, it is unclear how a partner should make a deposit before the push-out election is made. Further, if the partnership makes a push-out election after it has made a section 6603 deposit, it would be helpful to allow it to move the deposit to one or more partners so they can have the benefit of an earlier interest suspension date.

Recommendation

The AICPA recommends that the IRS provides instructions on the BBA website for how a partnership should make a section 6603 deposit.

We also recommend that the IRS clarify who is considered a terminal partner for purposes of the section 6603 instructions currently on the BBA website.

Additionally, we recommend that the IRS provides rules for how a partnership should move its deposit to be treated as a deposit by one or more direct or indirect partners.

Analysis

The BBA website contains instructions for how terminal partners can make a section 6603 deposit. However, since there is no definition of “terminal partner” it is unclear to whom the rules apply. In addition, though contemplated under section 6233(c), there are no rules on the BBA website for how a partnership should make a section 6603 deposit with respect to the imputed underpayment. Finally, in situations in which a partnership has made a deposit and subsequently pushes out adjustments, it would be helpful to be able to move the deposit to one or more direct or indirect partners in order for them to benefit from the earlier date of the deposit.