December 14, 2023

The Honorable Lily Batchelder
Assistant Secretary for Tax Policy
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

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

Ms. Holly Porter
Associate Chief Counsel, Office of Chief Counsel
Passthroughs and Special Industries
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

RE: Comments on Form 8308 Due Date and Inclusion of Section 751 Income Items

Dear Assistant Secretary Batchelder, Commissioner Werfel, and Ms. Porter:

The American Institute of CPAs (AICPA) is writing to urge Treasury and the IRS to simplify the burdensome new filing requirements mandated by the revised version of Form 8308, *Report of a Sale or Exchange of Certain Partnership Interests* for the 2023 tax filing season. The 2023 version of Form 8308 impedes the ability of taxpayers and tax practitioners to timely calculate computations and prepare complete and accurate returns for partnerships by the required January 31st deadline. Our suggestions include two alternative recommendations: 1) revert to the previous filing requirements of the 2018 revised Form 8308, or 2) extend the deadline for Form 8308 reporting to align with the due date of Schedules K-1 (Form 1065), *Partner's Share of Income, Deductions, Credits, Etc*.

Overview

A partnership is required to report each sale or exchange by a partner of all or part of a partnership interest attributable to an ordinary income component—by providing its partners with Form 8308 and later including these forms along with its filing of Form 1065 and related Schedules K-1 with the IRS.

Under the 2018 revised version of Form 8308, a partnership was required to provide the following information:

- The names and address of the transferor, and
- The names and address of the transferee.

However, under the 2023 revised version of Form 8308, a partnership must also include the following information:

- The beneficial owner and record holder of the transferred partnership interest both before and after the sale,
- Both the partnership and the selling partner's share of ordinary income, collectibles gain, and unrecaptured section 1250 gain, and
- The type of partnership interest transferred.

However, due to other recent changes to Schedules K-1, the selling partner's share of ordinary income, collectibles gain, and unrecaptured section 1250 gain is already included on such partner's Schedule K-1.

Recommendation

The AICPA recommends that Treasury and the IRS revert to the previous revised 2018 Form 8308, thereby streamlining the reporting of information on section 751(a)[1] income items, eliminating the need for redundant reporting on Schedules K-1.

Analysis

The preparation of a partner's Schedule K-1 is contingent upon the finalization of the partnership's tax return, particularly the calculation of the ordinary income component of section 751(a) income items. Computing the tax calculations from a section 751(a) exchange to include on Form 8308 will be burdensome, if not impossible, as data including finalized financial statements, purchase price allocations, and many other key inputs will not exist as of January 31st. To make the transition to the new reporting requirements less cumbersome for taxpayers and tax practitioners, this information should be excluded from Form 8308, as it is already included on Schedule K-1.

Recommendation

If reverting to the 2018 Form 8308 is not feasible, the AICPA recommends that Treasury and the IRS waive any penalties associated with the January 31st deadline to furnish the forms to each transferee and transferor partner and synchronize the due date of Form 8308 with the due date of Schedules K-1 provided to partners.

Analysis

Given the late release of the revised 2023 Form 8308, complying with this new reporting requirement will impose an undue burden on taxpayers and practitioners, especially considering that this information will be subsequently provided on Schedule K-1s for partners. Recognizing the IRS' goals of improving partnership disclosure, the AICPA urges a more gradual approach to implementing these new requirements, as the potential hardships and penalties levied on taxpayers and tax practitioners outweigh the immediate necessity for such modifications.

[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.

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The AICPA is the world's largest member association representing the CPA profession, with more than 421,000 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 Nick Passini, Chair, AICPA Partnership Taxation Technical Resource Panel, at (563) 888-4019 or nick.passini@rsmus.com; Leighton Regis, AICPA Senior Manager – Tax Policy & Advocacy, at (202) 434-9218 or leighton.regis@aicpa-cima.com; or me at (830) 372-9692, or bvickers@alamo-group.com.

Sincerely,

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