



August 30, 2021

The Honorable Ronald Wyden
Chairman
U.S. Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Richard Neal
Chairman
U.S. House Committee on Ways and Means
1102 Longworth House Office Building
Washington, DC 20515

The Honorable Michael Crapo
Ranking Member
U.S. Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Kevin Brady
Ranking Member
U.S. House Committee on Ways and Means
1102 Longworth House Office Building
Washington, DC 20515

RE: Support of Green Book Proposal to Modify “Tax Administration Rules” under Section 6226 and Request Similar Amendments to Section 6227

Dear Chairmen Wyden and Neal, and Ranking Members Crapo and Brady:

The American Institute of CPAs (AICPA) is pleased to submit comments in support of the Administration’s Green Book proposal to modify “Tax Administration Rules” under section 6226.¹

Overview

Passed as part of the Bipartisan Budget Act of 2015 (BBA),² the centralized partnership audit regime (CPAR) is generally applicable to partnership tax years after December 31, 2017. The CPAR replaced the longstanding partnership audit and litigation rules enacted as part of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA).³ The CPAR provides that all adjustments to partnership-related items are determined and any related tax is generally assessed and collected at the partnership level. However, under section 6226, reviewed-year partners that receive a net decrease adjustment in the reporting year⁴ may only use that decrease to reduce the reporting year tax liability to zero (but not below zero).⁵

Any excess decrease in the reporting year due to the negative reviewed-year adjustment is permanently lost. The excess reporting year decrease is not treated as a tax overpayment that may be refunded nor is it carried back or forward to reduce the partner’s tax liability in prior or future

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

² P.L. 114-74.

³ P.L. 97-248. BBA also removed the electing large partnership regime. Under CPAR a partnership may elect “push-out” treatment of positive tax adjustments; negative tax adjustments must be pushed out to the partner.

⁴ Section 6226(b)(1).

⁵ Section 6226(b)(2).

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years. The Green Book proposal would amend section 6226 and section 6401 of Title 26 to provide that the amount of the net negative change in tax due to the reviewed-year adjustment that exceeds the income tax liability of a partner in the reporting year is considered an overpayment under section 6401 and may be refunded. The Green Book correctly notes that a partner subject to the CPAR may pay more tax than a non-CPAR partner due to the current statutory mechanics of section 6226. Similar results also occur to adjustments made under section 6227.

Recommendation

The AICPA supports these statutory modifications proposed in the Green Book to section 6226. The AICPA also recommends providing procedural parity by similarly amending or statutorily clarifying section 6227. Adjustments made under section 6227 with respect to administrative adjustment requests (AARs) would benefit from similar amendments and/or clarification to provide for a tax refund in the reporting year of excess negative review-year adjustments.

Analysis

Taxpayers should pay the correct amount of tax – not more or less than the law requires. The current statutory mechanics under section 6226 preclude this as partners subject to the CPAR may pay more tax than is imposed under Title 26. Currently, an excess negative-review year adjustment is treated essentially as a nonrefundable credit in the reporting year and partners may permanently owe more tax than is otherwise due. The Green Book proposal appears to treat the excess amount due to the partner as a refundable credit in the reporting year. However, President Biden's budget proposal treats this excess amount as a carryforward credit.

The AICPA supports the Green Book proposal as it provides parity for CPAR partners compared to non-CPAR partners, and the tax overpayment is provided to the partner in the reporting year similar to other tax refunds. Also, the same statutory treatment precluding refunds of excess taxes in a reporting year affects AARs that have adjustments that do not result in an imputed underpayment. Therefore, similar application should apply to both section 6226 and section 6227 adjustments to promote sound tax policy and not disadvantage CPAR partners based upon whether the excess negative adjustment is procedurally under section 6227 as opposed to section 6226 (under the Green Book proposal).

The AICPA is the world's largest member association representing the accounting profession, with more than 428,000 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.

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We appreciate your consideration of these comments and welcome the opportunity to discuss these issues further. If you have any questions, please contact Jose Ramon Carrasco, Chair, AICPA Partnership Taxation Technical Resource Panel, at (202) 521-1552 or jose.carrasco@us.gt.com; Alexander Scott, AICPA Senior Manager – Tax Policy & Advocacy, at (202) 434-9204 or Alexander.Scott@aicpa-cima.com; or me at (601) 326-7119 or JanLewis@HaddoxReid.com.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jan Lewis".

Jan F. Lewis, CPA
Chair, AICPA Tax Executive Committee

cc: The Honorable Charles P. Rettig, Commissioner, Internal Revenue Service
Mr. Mark Mazur, Acting Assistant Secretary for Tax Policy, Department of the Treasury
Mr. Thomas Barthold, Chief of Staff, Joint Committee on Taxation