

# Joint Venture Agreements

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## What You Need to Know Before You Sign

March 7, 2019

# Joint Ventures - Definition

- *ACDBE firm and one or more other firms*
- *single, for-profit business enterprise*
- *combine property, capital, efforts, skills and knowledge*
- *ACDBE responsible for a distinct, clearly defined portion of the work of the contract*
- *ACDBE's share in the capital contribution, control, management, risks, and profits of the joint venture commensurate with its ownership interest*

# Special Guidance for JVs

- *Need identified in 2005 as a result of:*
  - *Problems identified in fraud investigations*
  - *ACDBE not performing an independent part of the work*
  - *ADCBE participant **MUST BE** required to perform independently a distinct portion of the joint venture's work*

# Joint Venture - Counting ACDBE Participation

ACDBE participation counted =  
distinct, clearly defined portion of the work of the  
concession that the ACDBE performs with its own forces

# Joint Venture – ACDBE Certification

- Joint venture entities = NO
- Joint venture participants = YES
- ACDBE must be certified in the type of work performed under the contract

# Joint Venture - Legal Structure

- Partnership
  - Corporation
  - Limited liability company
  - Other legal structure
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- Parties in a JV must be firms, not individuals

# Significant and meaningful participation

- Tangible and intangible assets
  - Capital
  - Knowledge and skills
  - Efforts

# Ownership percentage participation

- Capital Contribution
- Control
- Management
- Risks
- Profit





# Role of Airport

1) REVIEW

2) APPROVE

3) MONITOR

# Assessing the Opportunity

- Location
- Airline stability
- Passenger demographics
- Product rights
- Pricing restrictions
- Airport operating costs
- Future potential
- Cash Needed

# The Agreement

- Know ... BEFORE you sign
- READ and understand everything in the Agreement
- Consult an attorney
- Consult an accountant

# Loans

- Majority Firms not required to make loans to ACDBEs
- Permitted to make such loans for up to 90% of the required capital
- Last, not first, resort for capital

# Loans and Conditions

- Terms & conditions = prevailing market conditions
  - Interest rate
  - Amortization table
  - Repayment terms
- Documentation
- Collateralized or Guaranteed
- Loan Term < Concession Agreement Term
- No restrictions that limit the ACDBE's ability to manage its own firm
- How will the loan impact distributions?
- Restrictions on future business opportunities

# Management/Decision-Making Participation

- Two distinct areas of participation
  - Overall management
  - Roles and responsibilities

# Overall Management

- High-level decision-making
- Governance
- Management Committee
  - Voting
  - Number of members = ownership share
  - Regular management meetings
  - Unanimous consent
  - Quorum
  - Important decisions & member representation

# Watch out for clauses like this.....

*“Any action required or permitted to be taken at any meeting of the Partners may be taken without a meeting, without prior Notice and without a vote if a consent in writing setting forth the action so taken is signed by Partners having not less than the minimum Percentage Interests that would be necessary to authorize or take such action at a meeting of the Partners.”*



# Roles/Responsibilities

*“If the ADCBE participant is not required to perform **independently** a distinct portion of the joint venture’s work, it becomes very easy for a prime concessionaire seeking to circumvent ACDBE requirements by having an ACDBE “silent partner” on its payroll.” 49 CFR part 23 preamble 2005*

- ACDBE must control the assigned roles/responsibilities
  - Decision-making
  - Direct Reports/Employees
- DO: Structure your roles to gain knowledge/insight into the business while contributing your expertise
- DON'T: Checking in once/week or once/month is not a distinct, clearly-defined portion of the work

## *The ACDBE must perform its roles with its “own forces”*

- If persons employed directly by the ACDBE perform the tasks associated with its participation in the joint venture, then the ACDBE is clearly performing that work with its own forces.
- If work performed by employees of the JV entity or a non-ACDBE participant in the JV as performed by the ACDBE’s “own forces” **IF** the ACDBE has the power to control those employees with respect to the performance of the ACDBE’s role (analogous to the utilization of contract employees).

- There should be a higher burden of proof that the ACDBE controls the employees performing its designated portion of the work in instances when the employees are employees of JV, and an even higher burden of proof when the employees are employees of the non-ACDBE.
- Simply having the employees on the payroll of the ACDBE firm does not remove the burden of proving that the ACDBE actually controls those employees.

# Sample Roles/Responsibilities – 35%

- 1) [ACDBE] company will have primary responsibility for the operation of gourmet coffee locations in Terminals 1, 2 and 3
- 2) [ACDBE] company will employ staff to manage and operate said locations in accordance with the lease agreement and direction provided by the Management Committee
- 3) [ACDBE] company will attend and participate in weekly manager's meetings
- 4) [ACDBE] company will attend and participate in monthly meetings of the Management Committee

Is this 35% of the work of the contract?

# Sample Roles/Responsibilities – 20%

ACDBE, through a Manager nominated by the ACDBE Management Committee and approved by the Executive Management Committee, ACDBE shall be responsible for the day-to-day operation of Location X which is expected to generate approximately 20% of the Joint Venture Gross Revenues. The day-to-day operations include hiring, training, discipline and firing employees, inventory control, new product selection, merchandise display, daily sales and cash control. The day-to-day operations must be in compliance with the policies and procedures, which have been specified by the Executive Management Committee, for staffing, hours of operations, inventory management, and merchandising.

Is this 20% of the work of the contract?

# Other Management Considerations

- Joint Venture Manager
  - One of the parties is usually assigned as the Joint Venture Manager
  - The Joint Venture Manager will be granted certain authority
  - The authority should be limited. For example, the following decisions should not be left to the sole discretion of the JV Manager:
    - Determining distributions
    - Determining reserves
    - Making capital calls without restriction
    - Making large purchases (usually dollar limits apply)
    - Committing to capital expenditures not required by the lease
    - Controlling the day-to-day business without exempting the roles/responsibilities of the ACDBE

# Watch out for clauses like this.....

- *In the event that the Joint Venture Manager determines that additional capital is necessary or useful, additional capital contributions will be required. Each Member will contribute additional capital in the same proportion as its Percentage Interest.*

# And .....

- *The Joint Venture Manager shall determine the timing and amount of distributions based on an assessment of the Company's available net cash flow and future capital and operating needs.*
- *The Joint Venture Manager will determine reserves to be withheld from distributable cash flow.*
- *Look for a formula or definition for net cash flow*



# Profits

- Share profits in proportion to the ownership interest.
- Define in agreement:
  - Accounting method
  - Profit calculations
  - Withheld Reserves (*if applicable*)
  - Timing of distributions
  - Distribution Methods
- Ways to drain profits before they hit the bottom line:
  - Management or service fees
  - Required purchasing sources
  - Other requirements

# Watch out for clauses like this.....

- *Method of Accounting will be determined by the Management Committee.*
- *Management Committee will determine the method of accounting to be used to calculate profits/losses.*
- *Company will purchase all inventory from \_\_\_\_\_.*
- *Company will pay \_\_\_\_\_ a fee of 5% of sales for providing administrative services to the Company.*

# Risks

- Each of the participants in the JV must share in the risks (financial, legal, operational, etc.) of the business in proportion to their ownership interest.
- Guaranteed draws limit or eliminate risks - not permitted
- Fees and required purchasing sources - limit risks

# Non-Compete Clauses

- Should be reasonable, not overly-broad or not one-sided
- Examples:
  - An ACDBE is a Joint Venture partner in a franchised full-service restaurant. In this case, it is reasonable for the parties to agree not to enter into agreements for full-service restaurant operations that directly compete with the operation of the joint venture in that terminal
  - An ACDBE is a partner in a nationally-known licensed cosmetic retail store. In this case, it would not be reasonable to restrict the ACDBE from participating in a competing retail location at any airport in the country.

# Maintaining Certification

- Most JVs require ACDBEs to maintain their certification.
- Losing certification often an event of default or a “terminating event.”
- Exception: when an ACDBE loses its certification because it exceeds the size standard or personal net worth cap.
  - In this event, the ACDBE participation can continue to be counted through the original term of the concession lease and should not be an event of default

# Change in Control/Management

- Restriction on a change of ownership or management of an ACDBE firm.
  - In such a case, the controlling partner may require an ACDBE to obtain written consent from them to effect such a change even if the change does not affect ACDBE certification.
  - This kind of clause is overly restrictive.
- However, there may be limitations on the ability of all partners to transfer their ownership in the joint venture – this is different as it doesn't seek to control an ACDBE's ability to make decisions regarding their own firm's structure.

# Watch out for clauses like ...

Any change in ownership of ACDBE that results in a change in control and/or management of ACDBE must be approved in advance by non-ACDBE.

# Management Fees

- Management fees charged by any of the parties must be a straight recovery of cost
- Management fees should not be used to drain profits before they are split
- The agreement should specifically address how the costs for such services are derived, the ability of the ACDBE to participate in the selection of the service provider, and a vehicle for monitoring and/or auditing such costs.



# Purchases

- Purchases from one of the partners should not be mandated.
- Purchases can be (and often are) made from one of the parties but should be at cost.
- The agreement should specifically address how the costs for product are derived.

# Employees

- If employees are paid by one of the partners, reimbursement should be at cost, including benefits.

# Books and Records

- ACDBE partners should receive financial statements.
- Deductions from distributions should be clear.
- Accounting method should be clear.
- ACDBE partners should receive full copies of tax returns for the Joint Venture.
- If books and records are kept in an out of state location, requiring the ACDBE to travel to inspect the books, accommodation should be made to provide as much information as possible in an electronic format.

# Participation Reports

- Various reports are required for monitoring the ACDBE participation.
- ACDBEs should be familiar with their roles and should be performing their roles in a way that meets the requirements for independence.
- In preparing participation reports, be accurate and honest.

# Monitoring

- Ongoing monitoring of the JV is required by the FAA
- Monitoring activities include:
  - Annual verification of ACDBE certification eligibility
  - Periodic review (usually quarterly) of meeting minutes, capital contributions, loans and loan repayments, distributions, activity reports, etc.
  - Periodic interviews (usually annual or more frequent if issues are identified) with managers, participants, and employees
  - On-site visits to the operation (announced and un-announced)
  - Review of any other documentation necessary to ensure compliance

# Examples – Selected Agreement Terms

- **Term.** The term of the Joint Venture shall, subject to the provisions of Section 1.02, commence upon the execution hereof by all of the Parties to the Joint Venture and shall terminate, unless otherwise agreed in writing by the Joint Venturers, **ninety (90) days after expiration of the term of the Concession Agreement.**

# Sample JV terms/conditions

- **Ownership Interests in Joint Venture.** The interests of the Joint Venturers in this Joint Venture, in all assets thereof and in any profits and losses or liabilities thereof, shall be as follows;
  - Company 1 - 84%
  - Company 2 - 16%

# Unanimous decisions

- **Overall Management.** The management and control of the Joint Venture shall be vested in Company 1 and Company 2. None of the following actions shall be taken by the Joint Venture unless approved by the affirmative vote of both of the Joint Venturers:
  - (i) Dissolution of the Joint Venture;
  - (ii) Borrowing or lending funds outside the ordinary course of the Joint Venture's business;
  - (iii) Guaranty of the debt of another individual or entity;
  - (iv) Entering into any agreement outside the scope or the purpose of the Joint Venture;
  - (v) Execution and delivery of any amendment or supplement to the Concession Agreement.



- **Executive Management Committee Responsibility for Major Decisions.**

No action shall be taken or sum expended or obligation incurred by the Administrator, any Manager, the ACDBE Management Committee or any Joint Venturer with respect to a matter within the scope of any of the major decisions ("Major Decisions") affecting the Joint Venture, as defined below, unless such Major Decision has been approved and authorized by the unanimous vote of the Executive Management Committee. The following are deemed Major Decisions:

- (i) Entering into any contract, that is not contemplated in a current budget as adopted pursuant to Section 2.05 or is otherwise not in the ordinary and usual course of the business of the Joint Venture;
- (ii) **Borrowing money, guaranteeing any debt, pledging any Joint Venture property;**
- (iii) **Any other decision or action which, considered prior to the making of such decision or the taking of such action, would reasonably be expected to have a substantial, unfavorable effect on the Joint Venture, its profits, or the assets or operations thereof;**

- (iv) Requiring any Joint Venturer to make any contributions of capital to the Joint Venture other than: the initial contributions described in Section 3.01 (which are intended to include amounts required for working capital), capital expenditures required under the terms of the Concession Agreement and/or as proposed to the Airport in response to an RFP relating to the Concession Agreement, amounts required for mid-term refurbishments required under the Concession Agreement and amounts required to replenish operating losses of the Joint Venture, which shall not be deemed a Major Decision and shall be determined by majority vote of the Executive Management Committee;
- (v) Entering into any contract, or any amendment or modification thereto, with PRIME or an affiliate of PRIME or making any payment to PRIME or an affiliate of PRIME other than as expressly described in this Agreement.
- (vi) Entering into any amendment to the Concession Agreement, including any agreement having the effect of terminating the Concession Agreement.
- (vii) Modifying in any material manner the established method of operation of any Joint Venture store.
- (viii) Any other act that would materially affect the ability of the Joint Venture to carry on its business in the ordinary course.

# Management Committee

- **Day-to-Day Affairs.** The affairs and property of the Joint Venture shall be managed, controlled and directed by a management committee consisting of at least three (3) members (the "Executive Management Committee"). 2 members of the Executive Management Committee shall be appointed by Company 1 and 1 member shall be appointed by Company 2. Each Joint Venturer may at any time and from time to time, change its representative(s) by furnishing the 3 other Joint Venturers a written notice of appointment of a new representative, but until the furnishing of such notice, the actions of the representatives hereby appointed shall be binding.

# Timing of Meetings

- The Executive Management Committee shall hold a meeting to discuss the affairs of the Joint Venture at least once per calendar quarter and shall work, as required, to act upon matters pertaining to the ordinary and usual business affairs of the Joint Venture including operation of the Concessions, personnel management, budgeting, accounting, inventory control and maintenance of the Joint Venture's physical assets and facilities. The Joint Venture shall prepare and maintain formal agendas and minutes of the meetings of the Executive Management Committee. Before a regular meeting or upon the call of a special meeting of the Executive Management Committee, the Administrator shall give notice of such meeting to each Joint Venturer at least five (5) business days in advance of such meeting. Notice may be waived by any Joint Venturer either before or after a meeting and shall be deemed waived by any Joint Venturer who actually attends.

# JV Manager or Administrator

- **Joint Venture Administrator.** The Executive Management Committee shall select an administrator (the "Administrator"), who shall report to the Executive Management Committee. The Administrator shall be responsible for executing the decisions of the Executive Management Committee and for the general administration of the Joint Venture including but not limited to the following: accounting and financial records, administration and execution of contracts, tax matters, and compliance. Except for (i) the matters set forth in Section 2.01(a), (ii) matters related to the day-to-day operation of the Concessions for which the Managers (as defined in Section 2.09(b)) are responsible, and (iii) the Major Decisions: the business and affairs of the Joint Venture shall be administered according to the best judgment of the Administrator. The Administrator shall provide reports, verbally or in writing, to the Management Committee at least once per month.

# Capital Contributions

- **Capital Contributions.** The Joint Venturers shall make the necessary, initial and future contributions to the capital of the Joint Venture in proportion to their respective ownership interests in the Joint Venture. Each of the Joint Venturers acknowledge and understand that, pursuant to the requirements of the Concession Agreement, the Joint Venture shall be required to perform extensive improvements and renovations to the Concessions Spaces. The estimated cost of such improvements and renovations shall be presented to the Executive Management Committee with a copy to each Joint Venturer. Each Joint Venturer shall contribute its portion of the funds for such renovation as and when required by the construction contracts to be executed by the Joint Venture. In addition, to carry out the purposes of the Joint Venture, each Joint Venturer acknowledge and understand that it may be required to contribute monies from time-to-time for working capital.

# Distributions

- **Distributions.** The Executive Management Committee shall maintain books and records that accurately reflect the operations and financial condition of the Joint Venture, including the withdrawal by or distribution to any Joint Venturer of funds or other property of the Joint Venture. Such books and records shall be prepared using **sound accounting principles**, consistently applied. Distribution of net earnings shall be made to the Joint Venturers in proportion to their percentage interest in the Joint Venture, as stated in Section 1.07 of this Agreement, quarterly in such amounts and at such times as the **Executive Management Committee shall** in good faith determine that (i) funds are available, (ii) are not required for the payment of past and current obligations and after **provision for such reserves or other liabilities as the Executive Management Committee may determine to be prudent.**

# Roles/Responsibilities

- In addition to its participation in the overall management of the Joint Venture through the Executive Management Committee, Company 2, acting through a Manager nominated by Company 2 and approved by the unanimous vote of the Executive Management Committee, shall be responsible for the day-to-day operation of the Restaurant X location, which such location is projected to produce at least 30% of the total sales of the Joint Venture. The day-to-day operations include hiring, training, discipline and firing of personnel associated with Restaurant X, inventory control and ordering **consistent with vendor contracts**, daily sales and cash control. The day-to-day operations must be in compliance with the policies and procedures, which have been specified by the Executive Management Committee, for staffing, hours of operations, inventory management, and merchandising.



# Roles/Responsibilities – should not be shared

DESCRIPTION	Company 1	Company 2	DOCUMENTED OUTPUT
Ensure all stores have proper tools for all daily maintenance.		100%	Monthly/checklist
Food Display.		100%	Daily/replenish/rotate
Developing solutions and resolving any issues that arise involving concession operations.	50%	50%	Associate Sign Off sheets
Supervise day to day activities for shift supervisors and associates.	50%	50%	Audit sheets
Oversee distribution and collect cashier banks and provide change as necessary.	50%	50%	Cash Bank Control Log
Run a register if coverage is insufficient.	50%	50%	N/A
Enact disciplinary actions including proper documentation and implementation.	50%	50%	Action plan as required

# Review - Agreement Terms Requiring Careful Review

- Management Fees (Recovery of cost)
- Management Services
- Service or Management Agreements (Side Agreements)
- Requirements to Purchase Product through one of the partners or an affiliate
- Access to accounting records, including tax returns
- Loan terms and documentation
- Quorum for meetings
- Voting rights
- Roles/Responsibilities
- Limitations on control of ACDBE business

Thank You!

Questions?

# Following the ACDBE and the Money

4-26-18



Tamela Lee

Vice President –Business Diversity and Development

# Agenda

- Purpose
- Site Visit
- ACDBE Compliance Post-Execution of Lease
- Federal Tax Return, Schedule K—1 (Form 1065), Partner's Share of Income, Deductions, Credits, etc.
- Depreciation
- Follow the Money



# Purpose of Site Visits and Compliance Monitoring

§26.37 What are a recipient's responsibilities for monitoring the performance of other program participants?

- (a) You must implement appropriate mechanisms to ensure compliance with the part's requirements **by all program participants** (e.g., applying legal and contract remedies available under Federal, state and local law).
  
- (b) (b) Your AC/DBE program must also include a **monitoring and enforcement** mechanism to ensure that work committed to AC/DBEs at contract award or subsequently (e.g., as the result of modification to the contract) is actually performed by the AC/DBEs to which the work was committed. **This mechanism must include a written certification that you have reviewed contracting records and monitored work sites in your state for this purpose.** The monitoring to which this paragraph refers may be conducted in conjunction with monitoring of contract performance for other purposes (e.g., close-out reviews for a contract).



# SITE VISITS



# Site Visits

## Purpose

- To determine if the ACDBE Ownership and Control is real, substantial and continuing with the day to day control requirement of 49 CFR, Part 23.
- To confirm Company/Ownership Information and Capitol Contributions
- To review Overall Management and Day to Day Management
- To observe Physical Environment including Materials

## Type of Site Visits

- Scheduled
- Unscheduled

# Site Visit Questions

What company owns/operates the store/restaurant

What is the structure of the company (joint venture)

Who are the Partners (frequency of interaction)

What is the ACDBE Partner's responsibility

Who the Manager reported to directly (including frequency)

What are their roles (Manager)

Who pays them

Who performs their evaluation



# Common Themes from Site Visits

Compliant	Non-Compliant
Employees knew who the ACDBE partner(s) were.	Employees did not know the ACDBE partner
Employees acknowledged ACDBE partner as hands-on and participated in the day-to-day operations.	Employees had never seen the ACDBE partner at the location
ACDBE Manager was familiar with the roles and responsibilities of the ACDBE partner and his/her role in representing ACDBE partner.	ACDBE Partner identified as an investor, silent partner, stakeholder or consultant.
ACDBE Manager knew he/she was employed by the ACDBE Partner.	ACDBE Manager was not familiar with the roles and responsibilities of the ACDBE partner and reported to the ACDBE partner
ACDBE Manager acknowledged he/she had hiring and firing authority.	Manager assigned under ACDBE did not identify the ACDBE partner as its immediate supervisor

# More Common Themes from Site Visits

The JV indicated the ACDBE was operating the locations, however the site visit indicated the ACDBE was performing other duties i.e., marketing campaigns, brand management, communicating brands, hiring/firing

Confusion on which location the ACDBE operated

The ACDBE is not performing in the assigned role but is participating in a meaningful role

ACDBE is not operating the shift as assigned in the JV Agreement

Employees were familiar with the ACDBE partner but did not know what their role or function was in the store

ACDBE roles changing but not changing the agreement



# ACDBE Compliance Post-Execution of Lease

# ACDBE Compliance Post-Execution of Lease

- Documentation and/or proof of all capital contributions by the ACDBE joint venture partner(s) and non-ACDBE joint venture partner(s) including any promissory notes.
- Copies of management committee meeting minutes
- Distribution statements of profits and losses
- Annual submittal of reconciliation of Administrative or Management Fees by all parties and verification and documentation evidencing those fees represent a recovery of costs to the provider.
- Change/No Change in Ownership Affidavit
- Federal Tax Return, Schedule K—1 (Form 1065), Partner's Share of Income, Deductions, Credits, etc.
- Reports and Information are due within ten (10) business days as requested by the Board.
- Sensitive personal information must be redacted prior to submitting.

# Post Award Issues

Non - Compliance	Compliance
<ul style="list-style-type: none"> <li>• Spreadsheet was provided indicating the amount of capital contributed, but no documentation was included.</li> <li>• Discrepancy in timing of Capital Contribution</li> </ul>	<p>Documentation evidencing capital contributions made by each party is needed.</p> <ul style="list-style-type: none"> <li>•Cancelled Checks</li> <li>•Funds Transfer</li> <li>•Documented on U.S. Return of Partnership Income form 1065</li> <li>•Balance Sheet (Analysis of Partner's Capital accounts)</li> </ul>
<p>Lack of Loan Repayment documentation</p>	<ul style="list-style-type: none"> <li>• <b>Loan Repayment Schedule</b></li> <li>• A loan statement with detail payments made to date and current balance.</li> <li>• <b>Cancelled Checks</b></li> <li>• <b>Funds Transfer</b></li> <li>• <b>Prefer not taken prior to distribution but would need to be negotiated</b></li> </ul>

# Post Award Issues

Non – Compliance	Compliance
<p>Distribution amounts provided but lack of documentation on how the profit was calculated</p> <ul style="list-style-type: none"> <li>• Not providing minutes or management meetings inconsistent with the JV agreement</li> <li>• No mention of ACDBE at the meeting</li> </ul>	<p>Statements detailing the calculation of profit or loss</p> <p>Ensure you are meeting under the terms of your JV agreement Ensure they are for the correct JV (DFW)</p> <p>Formal Minutes</p> <ul style="list-style-type: none"> <li>• Date</li> <li>• Quarter</li> <li>• Attendees</li> <li>• Discussion and voting on any issues</li> </ul>
<p>No reconciliation of management fees</p>	<p>Provide a schedule of management fees and documentation evidencing the fees are reimbursable costs</p>



Federal Tax Return, Schedule K—1 (Form 1065),  
Partner's Share of Income, Deductions, Credits, etc.

# IRS Form 1065 – U.S. Return of Partnership Income

S:\Capacity Building Program Series\2018\April 2018\Joint Venture Agreements, April 26\Hyperlinks to Letters and Forms\Form 1065.pdf

<b>1065</b>		<b>U.S. Return of Partnership Income</b>		OMB No. 1545-0047	
Form 1065 Department of the Treasury Internal Revenue Service		For calendar year 2017, or tax year beginning 2017, ending 2017		2017	
A Principal business activity		Name of partnership		D Employee identification number	
B Principal product or service		Type or Profit		E Date business started	
C Business code number		Number, street, and room or suite no. if a P.O. box, see the instructions.		F Total assets (see the instructions)	
		City or town, state or province, country, and ZIP or foreign postal code			

G Check applicable boxes: (1)  Initial return (2)  Final return (3)  Name change (4)  Address change (5)  Amended return (6)  Technical termination - also check (1) or (2)

H Check accounting method: (1)  Cash (2)  Accrual (3)  Other (specify) ▶

I Number of Schedules K-1. Attach one for each person who was a partner at any time during the tax year ▶

J Check if Schedules C and M-3 are attached

**Caution. Include only trade or business income and expenses on lines 1a through 22 below. See the instructions for more information.**

Income	1a	Gross receipts or sales	1a	
	b	Returns and allowances	1b	
	c	Balance. Subtract line 1b from line 1a	1c	
	2	Cost of goods sold (attach Form 1125-A)	2	
	3	Gross profit. Subtract line 2 from line 1c	3	
	4	Ordinary income (loss) from other partnerships, estates, and trusts (attach statement)	4	
	5	Net farm profit (loss) (attach Schedule F (Form 1040))	5	
	6	Net gain (loss) from Form 4797, Part II, line 17 (attach Form 4797)	6	
	7	Other income (loss) (attach statement)	7	
	8	Total income (loss). Combine lines 3 through 7	8	
	9	Salaries and wages (other than to partners) (less employment credits)	9	
	10	Guaranteed payments to partners	10	
	11	Repairs and maintenance	11	
	12	Bad debts	12	
	13	Rent	13	
	14	Taxes and licenses	14	
	15	Interest	15	
	16a	Depreciation (if required, attach Form 4562)	16a	
	b	Less depreciation reported on Form 1125-A and elsewhere on return	16b	
	17	Depletion (Do not deduct oil and gas depletion.)	17	
	18	Retirement plans, etc.	18	
	19	Employee benefit programs	19	
20	Other deductions (attach statement)	20		
21	Total deductions. Add the amounts shown in the far right column for lines 9 through 20.	21		
22	Ordinary business income (loss). Subtract line 21 from line 8	22		

**Sign Here**

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than partner or limited liability company member) is based on all information of which preparer has any knowledge.

Signature of partner or limited liability company member \_\_\_\_\_ Date \_\_\_\_\_

Print preparer's name \_\_\_\_\_ Preparer's signature \_\_\_\_\_ Check  or PFTN  self-employed

Firm's name \_\_\_\_\_ Firm's EIN # \_\_\_\_\_

Firm's address \_\_\_\_\_ Phone no. \_\_\_\_\_

For Paperwork Reduction Act Notice, see separate instructions. Cat. No. 113002 Form 1065 (01/17)

# IRS Form 1065 – Schedule K1

[Hyperlinks to Letters and Forms/Form 1065 Schedule K1.pdf](#)

<b>1065</b>	<b>U.S. Return of Partnership Income</b>	OMB No. 1545-0123
Form Department of the Treasury Internal Revenue Service	For calendar year 2017, or tax year beginning _____, 2017, ending _____, 20____ Go to <a href="http://www.irs.gov/Form1065">www.irs.gov/Form1065</a> for instructions and the latest information.	<b>2017</b>
<b>A</b> Principal business activity	Name of partnership	<b>B</b> Employer identification number
<b>B</b> Principal product or service	Type of firm Number, street, and room or suite no. If a P.O. box, see the instructions.	<b>E</b> Date business started
<b>C</b> Business code number	City or town, state or province, country, and ZIP or foreign postal code	<b>F</b> Total assets (see the instructions)
		<b>G</b>
<b>G</b> Check applicable boxes: (1) <input type="checkbox"/> Initial return (2) <input type="checkbox"/> Final return (3) <input type="checkbox"/> Name change (4) <input type="checkbox"/> Address change (5) <input type="checkbox"/> Amended return (6) <input type="checkbox"/> Technical termination - also check (1) or (2)		
<b>H</b> Check accounting method: (1) <input type="checkbox"/> Cash (2) <input type="checkbox"/> Accrual (3) <input type="checkbox"/> Other (specify) ▶ _____		
<b>I</b> Number of Schedules K-1. Attach one for each person who was a partner at any time during the tax year ▶ _____		
<b>J</b> Check if Schedules C and M-3 are attached <input type="checkbox"/>		
<b>Caution.</b> Include only trade or business income and expenses on lines 1a through 22 below. See the instructions for more information.		
<b>Income</b>	<b>1a</b> Gross receipts or sales . . . . . <b>1a</b> <b>b</b> Returns and allowances . . . . . <b>1b</b> <b>c</b> Balance. Subtract line 1b from line 1a . . . . . <b>1c</b> <b>2</b> Cost of goods sold (attach Form 1125-A) . . . . . <b>2</b> <b>3</b> Gross profit. Subtract line 2 from line 1c . . . . . <b>3</b> <b>4</b> Ordinary income (loss) from other partnerships, estates, and trusts (attach statement) . . . . . <b>4</b> <b>5</b> Net farm profit (loss) (attach Schedule F (Form 1040)) . . . . . <b>5</b> <b>6</b> Net gain (loss) from Form 4797, Part II, line 17 (attach Form 4797) . . . . . <b>6</b> <b>7</b> Other income (loss) (attach statement) . . . . . <b>7</b> <b>8</b> Total income (loss). Combine lines 3 through 7 . . . . . <b>8</b>	<b>9</b> Salaries and wages (other than to partners) (less employment credits) . . . . . <b>9</b> <b>10</b> Guaranteed payments to partners . . . . . <b>10</b> <b>11</b> Repairs and maintenance . . . . . <b>11</b> <b>12</b> Bad debts . . . . . <b>12</b> <b>13</b> Rent . . . . . <b>13</b> <b>14</b> Taxes and licenses . . . . . <b>14</b> <b>15</b> Interest . . . . . <b>15</b> <b>16a</b> Depreciation (if required, attach Form 4562) . . . . . <b>16a</b> <b>b</b> Less depreciation reported on Form 1125-A and elsewhere on return . . . . . <b>16b</b> <b>17</b> Depletion (Do not deduct oil and gas depletion.) . . . . . <b>17</b> <b>18</b> Retirement plans, etc. . . . . <b>18</b> <b>19</b> Employee benefit programs . . . . . <b>19</b> <b>20</b> Other deductions (attach statement) . . . . . <b>20</b> <b>21</b> Total deductions. Add the amounts shown in the far right column for lines 9 through 20. . . . . <b>21</b> <b>22</b> Ordinary business income (loss). Subtract line 21 from line 8 . . . . . <b>22</b>
<b>Sign Here</b>	Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than partner or limited liability company member) is based on all information of which preparer has any knowledge.	
<b>Preparer's name</b>	Preparer's signature	Date
<b>Preparer's title</b>	Preparer's EIN	Check <input type="checkbox"/> if self-employed
<b>Preparer's address</b>	Preparer's phone no.	
For Paperwork Reduction Act Notice, see separate instructions. <span style="float: right;">Cat. No. 113002 <span style="margin-left: 100px;">Form 1065 (2017)</span></span>		



# Depreciation

# Depreciation

## Distribution Statement Adding Depreciation

Net Income (Loss)	\$(100,000)
Add Depreciation	<u>\$ 200,000</u>
Distributable Income	\$100,000

### Distributable Amount (60/40) split:

- Prime Concessionaire \$60,000
- ACDBE \$40,000

## Distribution Statement NOT Adding Depreciation

Net Income (Loss)	\$(100,000)
No Depreciation	<u>\$ 0</u>
Distributable Income	\$(100,000)

### Distributable Amount (60/40) split:

- Prime Concessionaire (\$60,000)
- ACDBE (\$40,000)
  
- Prime Concessionaire Really keeps:
  - (\$60,000)
  - \$200,000
  - \$140,000

# Follow the Money

What an ACDBE needs to understand:

- Cost Accounting
- General Ledgers
- Financial Statements:
  - Income Statements
  - Balance Sheet
  - Cash Flow Statements
- Promissory Note
  - Terms
  - Any Restrictions
  - Is the loan repaid before your distribution
  - Depreciation
- Management Fees



**ACDBEs**

**KNOW BEFORE YOU SIGN  
AND  
FOLLOW THE MONEY**

# Prime Concessionaires

**KNOW THE REGULATIONS  
BEFORE YOU SIGN**

**AND**

**FOLLOW THE REGULATIONS  
AFTER YOU SIGN**



# Q & A