

# CARES Act Update: IRS Issues Guidance for Amending Partnership Tax Returns

Update

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On April 8, 2020, the IRS released Revenue Procedure 2020-23 (the Revenue Procedure), which provides guidance for partnerships subject to the centralized partnership audit regime under the Bipartisan Budget Act of 2015 (the BBA Audit Rules) to claim retroactive benefits under provisions of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) for taxable years beginning in 2018 and 2019. Such benefits include changes to Section 163(j) of the Internal Revenue Code of 1986, as amended (the Code), that permit taxpayers to deduct additional interest expense and the opportunity to take 100% bonus depreciation on qualified improvement property, which includes improvements made to the interior of non-residential buildings, such as retail stores and restaurants, which corrected a drafting error in the Tax Cuts and Jobs Act (the TCJA).<sup>1</sup> The Revenue Procedure permits a partnership to claim such benefits by filing an amended partnership income tax return on IRS Form 1065 (an Amended Form 1065) for taxable years beginning in 2018 and 2019, rather than filing an administrative adjustment request (an AAR) under Section 6227 of the Code for such taxable years, as otherwise would be required.

## Background

The BBA Audit Rules, which are effective for audits of partnership taxable years beginning on or after January 1, 2018, generally allow the IRS to adjust items of income, gain, loss, deduction, or credit of a partnership, and assess any resulting underpayment of tax, at the partnership level.<sup>2</sup> Partnerships, and other entities that are classified as partnerships for federal income tax purposes, including limited liability companies, generally are subject to the BBA Audit Rules unless the partnership has 100 or few partners, none of such partners is, itself, a partnership or a disregarded entity, and the partnership files the election described in Section 6221(b) of the Code.

Partnerships subject to the BBA Audit Rules generally may not file an Amended Form 1065 for a taxable year for which they already filed an initial partnership

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income tax return on Form 1065 (an Initial Form 1065). Instead, if they wish to adjust partnership items for any taxable year, such partnerships are required to file an AAR. In some respects, an AAR is the functional equivalent of an amended tax return in the partnership context, but with a significant timing difference: a partnership filing an AAR for a prior taxable year must include the adjustments on its Form 1065 for the taxable year during which the AAR is filed. As a result, the partners must wait until such Form 1065 is actually filed to realize any corresponding benefits. Accordingly, without relief under the Revenue Procedure, partners generally would be unable to recognize CARES Act benefits for taxable years beginning in 2018 and 2019 until calendar year 2021, when most partnerships will file their Initial Forms 1065 for the taxable year 2020.

## **Amending Partnership Tax Returns under the Revenue Procedure**

The Revenue Procedure permits Eligible Partnerships (as defined below) to file an Amended Form 1065 for taxable years beginning in 2018 or 2019 rather than filing an AAR. An Eligible Partnership is a partnership subject to the BBA Audit Rules that filed an Initial Form 1065 and furnished Schedules K-1 for a taxable year beginning in 2018 or 2019 prior to the date on which the Revenue Procedure was released (April 8, 2020). In addition to benefits under the CARES Act, an Eligible Partnership may file an Amended Form 1065 under the Revenue Procedure to take into account any other tax attribute to which the partnership is entitled.

To comply with the Revenue Procedure, an Eligible Partnership must file an Amended Form 1065 for a taxable year beginning in 2018 or 2019 before September 30, 2020. To do so, the Eligible Partnership must file an IRS Form 1065 for either taxable year, must check the “Amended Return” box on such form, and must write “FILED PURSUANT TO REV PROC 2020-23” at the top of such form. The Eligible Partnership also must furnish corresponding amended Schedules K-1 to its partners before September 30, 2020, and must attach a statement with each such Schedule K-1 with the same written notation regarding the Revenue Procedure as on the face of the IRS Form 1065.

An Eligible Partnership that is under examination for a taxable year beginning in 2018 or 2019 may file an Amended Form 1065 under the Revenue Procedure for either such year, but only if the partnership sends written notice to the revenue agent coordinating the partnership’s examination of its intention to do so, either prior to or contemporaneously with the filing of such Amended Form 1065. Such Eligible Partnership also must provide the revenue agent with a copy of the Amended Form 1065 when filed.

## **Coordination with Notice 2019-46**

The Revenue Procedure also includes guidance with respect to Notice 2019-46 (the Notice), which clarified the application of Section 1.951A-5 of the Treasury Regulations (the Section 1.951A-5 Regulations). The Section 1.951A-5 Regulations provide rules for determining the global intangible low-taxed

income inclusion for partnerships, including in the case of a partnership that is, itself, a U.S. shareholder (generally, a direct or indirect 10% owner) in a controlled foreign corporation. The Notice provided, among other things, that certain partnerships may apply the proposed Section 1.951A-5 Regulations for taxable years ending before June 22, 2019, the date on which the final Section 1.951A-5 Regulations were released, and waived certain penalties otherwise applicable to partnerships that acted consistently with the proposed Section 1.951A-5 Regulations on or before such date, provided that the partnership satisfied certain conditions.

The Revenue Procedure provides that if a partnership applied the proposed Section 1.951A-5 Regulations for any taxable year ending before June 22, 2019 in accordance with the Notice, the partnership may continue to apply such regulations for purposes of filing an Amended Form 1065, provided that any amended Schedules K-1 furnished by the partnership to its partners in connection with the Revenue Procedure are consistent with the proposed Section 1.951A-5 Regulations and the partnership complies with certain notice procedures.

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<sup>1</sup> Click [here](#) for a general description of the tax-related provisions of the CARES Act.

<sup>2</sup> Click [here](#) for the most recent Bracewell Tax Report on the BBA Audit Rules.