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October 7, 2016

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RE: Notice 2016-23 – Implementation of the New Partnership Audit Regime Enacted as Part of the Bipartisan Budget Act of 2015

Dear Messrs. Koskinen and Wilkins and Ms. Tonuzi:

The American Institute of CPAs (AICPA) offers the following comments and recommendations in response to Notice 2016-23, *Request for Comments Regarding Implementation of the New Partnership Audit Regime Enacted as Part of the Bipartisan Budget Act of 2015*, issued on March 4, 2016.

Our comments provide recommendations for your consideration when drafting the necessary administrative guidance related to the implementation of the new code sections (Subchapter C, sections 6221 through 6241) relating to partnership audits. Our comments do not include specific recommendations related to Part III of new Subchapter C (sections 6231 through 6235). However, we will provide a separate letter which will identify a number of areas of concern regarding the impact of the new centralized partnership audit regime (“the Regime”) on substantive Subchapter K tax issues related to Subchapter S corporations, as well as state-level tax adjustments resulting from partnership audits under the Regime. We will also submit a separate comment letter to the appropriate congressional committees to identify areas where we think legislative changes are required to facilitate the ability of the Internal Revenue Service (IRS) to fairly and equitably administer the Regime.

These comments were developed by the AICPA Partnership Taxation Technical Resource Panel and approved by the AICPA Tax Executive Committee.

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BACKGROUND

On November 2, 2015, Congress enacted the Bipartisan Budget Act of 2015,¹ Pub. L. No. 114-74 (BBA) which made significant changes to the Internal Revenue Code (IRC) creating a new centralized partnership audit regime to replace the existing regime enacted as part of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. No. 97-248 (TEFRA). The Regime is generally effective for taxable years beginning after December 31, 2017.

Under temporary regulations² effective August 5, 2016, partnerships may elect to apply the Regime to taxable years beginning after November 2, 2015 and before January 1, 2018. Our letter does not contain comments or recommendations concerning the early election procedure outlined in the temporary regulations.

ANALYSIS

The Regime will generally centralize the ability of the IRS to audit, assess and collect any determined underpayment of tax directly from a partnership, subject to certain available elections. The elections include allowing certain partnerships to opt-out of the Regime, as well as an election for partnerships to push-out the responsibility for payment of any assessment imposed to its partners. The implementation of the Regime will require balancing a simplified assessment and collection process imposed at the partnership level against the general expectation that tax is imposed only on the appropriate taxable individual or entity, only on the properly calculated amount of taxable income and only at the appropriate rate of tax as enacted in the applicable section of the IRC.

As enacted, code sections 6221 through 6241, which establish the Regime, contain substantial procedural gaps and uncertainties which the United States Secretary of the Treasury (“Secretary”) is required to address through regulations. Our recommendations embodied in this letter are focused on the new procedures which will occur prior to the commencement of an examination, between the time an assessment is proposed and made final by the examiner, as well as the determination of which individuals and entities are ultimately responsible for paying the appropriate share of an assessment.

Additionally, we are in agreement with the commentators who believe that certain gaps and uncertainties are significant and warrant additional Congressional action to properly address them. Accordingly, we will submit a separate comment letter with a substantive description of these items to the relevant congressional committees.

¹ [Pub. L. No. 114-74.](#)

² [T.D. 9780.](#)

RECOMMENDATIONS

Section 6221

The AICPA provides the following recommendations related to section 6221:

1) Expand the list of eligible partners to include additional entity types.

We recommend that the IRS exercise their authority under section 6221(b)(2)(C) to identify the following types of entities as eligible partners under section 6221(b) for option to elect out of the Regime:

- a) Single Member LLCs (SMLLC) treated as disregarded entities owned by an eligible partner described in section 6221(b)(1)(C);
- b) Grantor Trusts, whose grantor is an eligible partner described in section 6221(b)(1)(C);
- c) Individual Retirement Accounts (IRAs);
- d) Qualified pension, profit-sharing and stock bonus plans described in section 401(a); and
- e) Tax-exempt organizations described in section 501(c).

We believe that the IRS should consider treating a number of specific additional types of entities as eligible partners under section 6221(b) in determining a partnership's eligibility to opt-out of the Regime.

SMLLCs are treated as disregarded entities for Chapter 1 of the Internal Revenue Code are not required to file an income tax return separate from their owner. In many cases, SMLLCs owned by an individual do not obtain a separate Employer Identification Number (EIN) since they do not have employees. A partnership Schedule K-1 is issued using the ultimate owner's Social Security Number (SSN). We believe that SMLLCs owned by eligible partners should also qualify as eligible partners. The same guidance should apply to grantor trusts.

IRAs, qualified pension, profit-sharing and stock bonus plans described in section 401(a) and tax-exempt organizations described in section 501(c) are generally not subject to income tax, meaning any adjustments to partnership items allocable to these partners would not result in an additional tax liability due to the United States Department of the Treasury ("Treasury").

We recommend that all of the additional eligible types of partners identified above are counted as receiving a single statement under section 6221(b)(1)(B).

2) Use Schedule K-1 (Form 1065), *Partner's Share of Income, Deductions, Credits, etc.* (Schedule K-1) to satisfy disclosure requirements.

We recommend that the IRS allow the inclusion of a copy of Schedules K-1 issued to the taxable year partners, to satisfy the disclosure requirements under section 6221(b)(1)(D)(i).

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A copy of the Schedule K-1 provided to each partner is included with each partnership's Form 1065 and contains the name and taxpayer identification number of the partner. Providing a Schedule K-1 to each partner satisfies the disclosure requirement under section 6221(b)(1)(D)(i).

3) Use a check-box to indicate a partnership's opt-out election.

We recommend the inclusion a check-box on Form 1065, *U.S. Return of Partnership Income*, and Schedule K-1 to indicate that a partnership has chosen to elect out of the Regime. This would provide a simple means for a partnership to indicate their desire to make this annual election.

In addition, allow checking the box on Schedule K to satisfy the notice requirement of section 6221(b)(1)(E). Each partner receives a Schedule K-1 containing information from the partnership's Form 1065. The addition of a checkbox to indicate the election out of the Regime, similar to the checkboxes for a Final or Amended K-1, will satisfy this requirement in a simple manner.

4) Do not require a partnership which chooses to elect out of the Regime to designate a Partnership Representative.

A partnership electing out of the Regime would appear to have no need for a Partnership Representative. We recommend that the IRS state this explicitly to avoid the possibility of confusion among taxpayers or examiners.

5) Allow taxpayers to provide required information on pass-through partners using an attached schedule.

We recommend that the IRS develop a new schedule for attachment to Form 1065 for the purpose of listing the name and TIN of those persons provided a statement under section 6037(b) by an S corporation which is a partner of a partnership electing out of the Regime.

This form would be similar in format to Schedule B-1 (Form 1065), *Information for Partners Owning 50% or More of the Partnership*, for use by partnerships opting out of the Regime and having an S corporation as a partner. If additional information is required to be provided regarding a partner which is SMLLC or grantor trust, the same schedule could be used.

Section 6223

The AICPA provides the following recommendations related to section 6223:

1) Identify the current Partnership Representative on Form 1065.

We recommend that the IRS repurpose the existing lines on Form 1065 used to designate the Tax Matters Partner to allow a partnership to designate their current Partnership Representative as of

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the return filing date. The most convenient time for identifying the Partnership Representative to the IRS is on the annual Form 1065 filed by the partnership.

2) Develop a *Designation of Partnership Representative* form.

We recommend the development of a new form to allow a partnership to designate or change their Partnership Representative at any time, including after notice of an administrative proceeding is issued and during the course of any audit, examination or appeal proceeding.

The recommend developing this form using Form 56, *Notice Concerning Fiduciary Relationship*, as a model for this new form which would allow a partnership to designate or change their Partnership Representative in between their annual Form 1065 filing. Our recommendation establishes a simple procedure for cases where a partnership failed to designate a Partnership Representative on their return, where an existing Partnership Representative has resigned or ceased to exist and where a partnership wants to replace their current Partnership Representative.

3) Recognize only the most recently appointed Partnership Representative for all purposes.

We recommend that the Partnership Representative listed on the latest filed Form 1065 or the new *Designation of Partnership Representative* shall receive all notices sent by the IRS under section 6231 and exercise the authority granted under section 6223 for all taxable years.

We recommend that only the most recently specified Partnership Representative have the power to receive notices, make elections and exercise the authority granted under section 6223 for all taxable years not closed by statute. To facilitate the ability of the IRS to identify the proper Partnership Representative, we recommend that the IRS establish a separate database of Partnership Representatives similar to the Centralized Authorization File (CAF) system.

4) Definition of substantial United States (U.S.) presence for the Partnership Representative.

We recommend a requirement that a Partnership Representative must be a U.S. citizen, resident alien or a business entity formed under the laws of a U.S. state government. In addition, we recommend requiring the Partnership Representative to possess a domestic address and phone number at which the IRS may contact them.

We believe requiring that the Partnership Representative is a person or entity based in the U.S. with domestic contact information will facilitate smooth functioning of the Regime.

5) IRS designation of Partnership Representative.

We recommend that if no Personal Representative has been appointed, the IRS is only allowed to designate as the Partnership Representative a reviewed year partner who continues to hold a

partnership interest at the time of the examination notice. We also recommend that a person designated by the IRS affirmatively accept the designation.

If no reviewed year partner continues to hold a partnership interest, the IRS may designate the partner with the largest percentage interest in capital or profits as the Personal Representative. This selection will ensure that the individual appointed by the IRS will have a material economic interest in the partnership under examination.

Section 6225

The AICPA provides the following recommendations related to section 6225:

1) Calculation of net adjustments.

We recommend that the IRS provide separate calculations of any imputed underpayment for those items which are capital as opposed to ordinary in character. This information will allow taxpayers to more easily provide support for requested modifications to the imputed underpayment based on the character of the adjustment. We also think it unlikely that Congress intended for unlimited amounts of capital losses to offset ordinary character income in computing any imputed underpayment.

2) Requirements when filing amended returns

We recommend that the IRS clarify that when a partner elects to file an amended return reflecting their allocated share of any adjustment under section 6225(c)(2), they are required to file amended returns for both the reviewed year and any intervening year(s) prior to the adjustment year for which any tax attribute was affected by the adjustments.

Section 6225(c)(2)(A)(ii) states that “such returns take into account all adjustments under subsection (a) properly allocable to such partners (and **for any other taxable year** with respect to which any tax attribute is affected by reason of such adjustments)” (emphasis added). It is unclear from this language whether this provision requires the filing of amended returns for any tax year subsequent to the reviewed year and prior to the adjustment year if a tax attribute is affected. Under section 6226, adjustments to taxable income due to tax attributes are calculated and paid as part of the taxpayer’s adjustment year return. A taxpayer electing to file an amended return for the reviewed year may have an incentive not to file amended returns for any intervening years, an action which would extend the statute of limitations for those years as well. We urge the IRS to clarify the procedures they expect taxpayers to follow in these cases.

We also recommend that the IRS clarify that if a partner elects to file an amended return reflecting their allocated share of an adjustment under section 6225(c)(2), that they may claim a refund for both the reviewed year and any intervening year(s) for which a tax attribute was affected.

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Additionally, permit an amended return filing for intervening year(s) regardless of any statute limitation under section 6511.

It is unclear whether a taxpayer electing to file amended returns under section 6225 may, a) claim a refund for the reviewed year or intervening years; or b) actually file amended returns for intervening years in which a tax attribute was affected if the taxpayer's statute of limitations under section 6511 has expired for that year. We recommend that the IRS clarify that both of these actions are permitted.

3) Develop standardized allocation forms to provide information to partners and the IRS.

We recommend that the IRS develop a standardized allocation form for use by a partnership to:

- a) Notify partners of their allocable shares of the proposed adjustments to allow partners to prepare and file amended returns as provided under section 6225(c)(2).
- b) Notify the IRS of the allocable shares attributable to tax-exempt partners or C corporations, which represent capital gains or qualified dividends, or are eligible for a modification of tax rate under section 6225(c)(3), section 6225(c)(4), or section 6225(c)(5).

In order to minimize confusion and provide a common reporting format for adjustments, we recommend that the IRS provide partnerships with a standardized allocation form for use in reporting adjustments to partners who may want to file amended returns. Partnerships could use the same form when requesting modifications of the imputed underpayment from the IRS.

We further recommend that the standardized allocation form contain, at a minimum:

- a) The name, address and taxpayer identification number (TIN) of the partnership;
- b) The name, address, TIN and entity classification of the partner; and
- c) A detailed listing of the original amounts reported to the partner for the reviewed year and the proposed adjustment to each item of income, gain, loss, deduction or credit allocable to the partner.

In addition to the items listed above, the form(s) should include an indication whether they are provided to a partner for use in filing amended returns or to the IRS as a request for modification of the imputed underpayment. In the latter case, the basis of the request (type of partner or character of income) should also appear on the form.

4) Proof of amended return filings.

We recommend that a partnership may establish that a partner has filed the required amended returns under section 6225(c)(2) by submitting to the Secretary:

- a) A statement signed under penalty of perjury by a person authorized to sign a tax return on behalf of the partner that the amended returns were filed;
- b) The statement shall include the year or year(s) for which returns were filed, the mailing date of the returns and the IRS service center where the returns were mailed; and
- c) A copy of the standardized allocation form provided to the partner by the partnership.

We think that privacy concerns may impede the ability of a partner to provide a copy of their amended return(s) to the partnership. Therefore, a statement signed by the partner under penalty of perjury, along with the described detailed information should suffice to allow the IRS to verify that the amended returns were filed and the additional tax paid.

5) Amended return filings by upper-tier partnerships.

It appears that under the Regime, partnerships are no longer permitted to file amended returns or issue amended Schedules K-1 to their partners. In the case of an upper-tier partnership which is a partner in an audited partnership, we request clarification that the filing of an Administrative Adjustment Request (AAR) request under section 6227 will satisfy the amended return provision of section 6225.

6) Proof of tax-exempt entity as partner.

We recommend that a partnership may establish that a portion of the imputed underpayment is allocable to a tax-exempt partner and eligible for exclusion under section 6225(c)(3) by submitting to the Secretary:

- a) A statement signed under penalty of perjury by a person authorized to sign a tax return on behalf of the partner stating that the entity qualifies as a tax-exempt entity (as defined in section 168(h)(2)) and that the none of the allocated adjustments relate to income that would be Unrelated Business Taxable Income (UBTI); and
- b) A copy of the standardized allocation form provided to that partner by the partnership.

We believe the IRS can readily verify the tax-exempt status of a partner by checking the partner's EIN against their internal databases. A statement signed under penalty of perjury and a standardized form showing the amount of an adjustment allocable to that partner should provide sufficient information to allow the IRS to approve the modification request.

7) Proof of C corporation as partner.

We recommend that a partnership may establish that a portion of the imputed underpayment is allocable to a partner that is a C corporation and eligible for a lower applicable rate under section 6225(c)(4)(A)(i) by submitting to the Secretary:

- a) A statement signed under penalty of perjury by a person authorized to sign a tax return on behalf of the partner that the entity is a C corporation.
- b) A copy of the standardized allocation form provided to the partner by the partnership.

We think that the IRS can readily verify whether a partner is a C corporation by checking the partner's EIN against their internal databases. A statement signed under penalty of perjury and a standardized form showing the amount of an adjustment allocable to that partner should provide sufficient information to allow the IRS to approve the modification request.

8) Proof of qualification for lower capital gain or qualified dividend rate.

We recommend that a partnership may establish that any portion of the imputed underpayment attributable to an item of capital gain or qualified dividend is allocable to a partner who is an individual or an S corporation and eligible for a lower applicable rate under section 6225(c)(4)(A)(ii) by submitting to the Secretary:

- a) A statement signed under penalty of perjury by the individual taxpayer that he or she is an individual or by a person authorized to sign a tax return on behalf of the partner that the entity is an S corporation; and
- b) A copy of the standardized allocation form provided to that partner by the partnership.

We believe that the IRS can readily verify that a partner is an individual or an S corporation by checking the partner's EIN against their internal databases. In addition, we have previously suggested that the IRS provide a separate calculation to the partnership for the portion of an adjustment related to items of capital gain or qualified dividends. A statement signed under penalty of perjury and a standardized form showing the amount of an adjustment allocable to that partner should provide sufficient information to allow the IRS to approve the modification request.

9) Appeal of proposed partnership adjustments.

When a partnership requests a hearing with the Office of Appeals on the adjustment in a notice of proposed partnership adjustment (NOPPA), the final decision by an appeals officer may occur near or after the end of the statutory 270-day period in section 6225(c)(6). We recommend automatically extending the 270-day period while a taxpayer's appeal of the adjustment is pending. We further recommend automatically extending the period following the final decision by appeals to allow the partnership a minimum of 90 days to request any modifications before the IRS may take further action.

10) IRS review of requested modifications.

We recommend that the IRS should notify a partnership whether a requested modification of the imputed underpayment amount is accepted within 90 days of receipt of the request.

As previously discussed, we think that the task of verifying requested modifications will require minimum effort of the part of the IRS. Therefore, we believe a requirement that the IRS provide a response within 90 days of receipt is reasonable and will minimize any delay in finalizing the audit and allow the IRS to collect the modified imputed underpayment from the partnership.

11) IRS denial of requested modifications.

We recommend that if the IRS denies any requested modification of the imputed underpayment amount, the partnership shall have a minimum of 30 days after the date of the rejection to file a notice of appeal with the Secretary.

While the Regime as enacted does not address this issue, we believe that a partnership should have full appeal rights for any denial of a requested modification. To expedite the ultimate resolution of an audit, we recommend requiring the partnership to file a notice of appeal within 30 days of a rejection.

12) Consolidated appeals hearing for multiple requested modifications.

We recommend that the IRS may, at its sole discretion, elect to have a separate appeals hearing for each appeal of a rejected modification of the imputed underpayment or consolidate all such appeals in a single hearing scheduled after the expiration of the 270-day period specified in section 6225(c)(6).

It is possible that a partnership may make multiple requests for modifications to the imputed underpayment during the statutory 270-day period. In an effort to minimize resource usage, we recommend that the IRS, at their sole discretion, schedule a separate appeals hearing for each rejected modification appealed or combine all rejected modifications appealed into a single hearing scheduled after the expiration of the 270-day period.

13) Automatic extension of the 270-day period between issuance of FOPPA and issuance of a notice of final partnership adjustment (FPA).

We recommend an automatic extension of the 270-day period specified in section 6231(a) for the mailing of a notice of final partnership adjustment (FPA) until 30 days after the later of any IRS notice regarding the acceptability of any requested modification to the imputed underpayment or the final decision of the appeals hearing officer on any requested modification rejected by the IRS. The IRS should be barred from issuing an FPA while a modification request is still pending either with the examining officer or with appeals.

14) Modification of imputed underpayment based on upper-tier partners.

We recommend that the IRS allow a partnership to request a modification of an imputed underpayment based on the filing of amended returns by any indirect partners or their entity type

in all upper-tier partnerships and beneficial owners of pass-through entities (such as S corporations and trusts) provided the appropriate documentation is submitted on a timely basis.

In multi-tiered partnership structures, the indirect partners will often meet the qualification for modification of an imputed underpayment. We believe that equity dictates that a partnership is allowed to claim a modification based on the action or character of any indirect partners, such as partners of an upper-tier partnership or owners of an S corporation partner. In such cases, the partnership will need to provide both a clear explanation of where in the tiered structure each partner exists, as well as completed copies of the standardized allocation forms showing the allocation through each of the tiers from the partnership to the ultimate indirect partner.

15) Option to file AAR in lieu of adjustment year inclusion.

In the case where an examination does not result in an imputed underpayment, the Regime requires the partnership to adjust their income or loss reported in the adjustment year. For partnerships where the ownership structure has changed significantly between the reviewed year and the adjustment year, some reviewed year partners would not receive the benefit of the adjustment. We recommend that the IRS permit partnerships to elect to file an AAR using the procedures outlined in section 6227 in lieu of this provision.

16) Additions to types of allowable modifications.

Section 6225(c)(5) permits the Secretary to take additional factors into consideration for modifying an imputed underpayment. We recommend that the IRS establish administrable procedures to allow a partnership to request modification of the imputed underpayment for situations involving a) a partner's cumulative excessive net operating loss; b) a partner's subsection to the alternative minimum tax in all relevant tax years; and c) a partner's insolvency for purposes of section 108 during the reviewed year.

Section 6226

The AICPA provides the following recommendations related to section 6226:

1) Election of push-out option.

We recommend that the IRS allow the Partnership Representative to elect to apply section 6226 with respect to an imputed underpayment by signing a preprinted statement to such effect on the FPA and returning it to the IRS within statutory time period.

We believe the simplest method to allow a Partnership Representative to elect the application of the section 6226 push-out option is including a preprinted statement making the election on the FPA. The Partnership Representative would sign and return the FPA to the examiner within the statutory 45-day window.

2) Allow a reasonable cause exception for late elections under section 6226(a)(1).

We recommend that the IRS clearly state that they will allow a reasonable cause exception for a late election to apply the section 6226 push-out option.

3) Assign a unique control number to the FPA.

We recommend that a unique control number is assigned to the FPA and that all adjustment Schedules K-1 issued by the audited partnership or any of its upper-tier pass-through partners are required to contain that control number.

In order to accurately track the adjustments Schedules K-1 issued and subsequent return filings by the affected partners, we recommend that a unique control number is assigned to the FPA and that the number must appear on all adjustment Schedules K-1 and any form reporting each partner's adjustments filed with their adjustment year return. The use of a unique control number will aid in the ability of the IRS to track the adjustments and payment of tax by upper-tier partners in multi-tier partnership structures.

4) Adjustment statements provided to partners.

We recommend that the statement provided to each partner (a/k/a Adjustment K-1) under section 6226(a)(2) contains the same fields as the originally issued K-1 (three columns showing the partner's allocable share of the originally reported amount, the adjustment (if any) and the adjusted amount for each item of income, gain, loss, deduction or credit, as well as each partner's allocable share of any penalties or other additions to tax). The statements should also contain fields identifying the reviewed year, the adjustment year, the issue date, the unique control number, the partnership, the partner and the Partnership Representative.

In order to facilitate each partner's calculation of their additional liability, we believe that the partnership should provide as much detail as possible of the original and adjusted K-1 amounts.

We also recommend that the Adjustment K-1s are issued to the reviewed year partners within 90 days after the latter of: a) the date the FPA is issued; or b) if a petition is filed under section 6234, the decision of the court becomes final, the case is otherwise concluded or an amended FPA is issued by the IRS.

5) Optional revocation of a push-out election.

We recommend that the IRS allow a partnership which requests a judicial review under section 6234 to revoke a previously made election to apply the section 6226 push-out option within 45 days after any decision of the court becomes final.

In some cases for ease of administration, a partnership may prefer to pay the ultimate imputed underpayment following a court decision, rather than use the previously elected section 6226 push-out provisions. We believe that allowing a partnership to revoke their section 6226(a)(1) election serves the interest of efficient tax administration. Such a revocation is in the agency's interest, since the IRS would receive full payment of the imputed underpayment directly from the partnership.

6) Modification of an FPA.

We recommend that if an FPA is modified after issuance by a court decision or any other method, the IRS must issue an amended FPA within 30 days of the date of the modification.

We believe that the IRS should issue an amended FPA to reflect any changes to the original FPA made by a court decision or settlement agreement. The amended FPA should contain a different control number from the original FPA to ensure proper tracking.

7) Elections by upper-tier partnerships.

We recommend that the IRS allow an upper-tier partnership, upon receipt of an Adjustment K-1, the option to either pay their share of the imputed underpayment, interest and penalties calculated and paid under the provisions of section 6225(b)(1) and section 6232 or elect to further push-out the adjustment under rules similar to those of section 6226.

We strongly disagree with the suggestion made by the Joint Committee on Taxation ("Joint Committee") in the *General Explanation Of Tax Legislation Enacted in 2015* ("Blue Book")³ that an upper-tier partnership which receives an Adjustment K-1 must pay its share of the imputed underpayment directly. We believe fairness, equity and the intent of section 6226 should allow an upper-tier partnership the option to elect the section 6226 push-out option. The suggestion that an upper-tier partnership must calculate and pay any additional tax directly is particularly unwarranted in the case of a partnership which has previously elected out of the Regime under the provisions of section 6221 for either the reviewed year or the adjustment year.

8) Timing of push-out statements by upper-tier partnerships.

We recommend that an upper-tier partnership which elects to further push-out an adjustment, have to issue Adjustment K-1s to their partners within 45 days after issuance of an Adjustment K-1 by the audited partnership or, in case of a multi-tiered structure, a direct lower-tier partnership. We recommend that copies of the Adjustment K-1s be furnished to the IRS at the same time.

³ [JCS-1-16](#).

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To ensure that the push-out process is not unduly delayed in the case of a multi-tiered partnership structure, we recommend that all upper-tier partnerships electing the push-out option have only 45 days after receipt of an Adjustment K-1 to prepare and issue Adjustment K-1s to their partners.

We recommend that upper-tier partnerships electing to use the push-out option provide the necessary forms and information to track the allocation and payment of tax directly to the IRS. Use of the unique control number assigned to the FPA on any documents they submit will assist the IRS to accomplish this goal. The partnership should also indicate their election to push-out an adjustment on their Form 1065 for the adjustment year.

9) Push-out election by opted-out partnerships.

We recommend that the IRS allow an upper-tier partnership, including one which has elected out of the Regime under the rules of section 6221(b) for the reviewed year, to elect to push-out an adjustment K-1 received to their reviewed year partners.

The Regime is unclear as to whether a partnership which has elected out under section 6221 is permitted to use the push-out option of section 6226. We recommend that the IRS clearly state that such partnerships qualify for the election.

10) S Corporation treatment of received Adjustment K-1s.

We recommend that the IRS require an S corporation that receives an Adjustment K-1, within 45 days after issuance of an Adjustment K-1 by the audited partnership, to issue a similar Adjustment K-1 form specifically designed for use by S corporations to their shareholders, reflecting each owner's allocable portion of the adjustments.

There is no provision within the IRC or the Regime to require an S corporation to directly pay its allocable share of an adjustment. We recommend that an S corporation which receives an Adjustment K-1 follow procedures similar to those used by a partnership under section 6226 to report the properly allocable portion of the adjustment to the IRS and its owners.

We also recommend that the IRS require that an S corporation shareholder receiving such an Adjustment K-1 calculate and pay additional tax, penalty and interest in a manner similar to the rules under sections 6226(b) and 6226(c). This method is similar to a partner who receives an Adjustment K-1.

11) Failure of partners to report Adjustment K-1.

We recommend that a direct or indirect reviewed year partner who receives an Adjustment K-1 and fails to properly report, calculate and pay the additional tax, interest and penalties is treated as filing inconsistently with the partnership.

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We believe that treating a failure to properly report an Adjustment K-1 on the adjustment year return is best treated as an inconsistent filing by the partner. This action will allow the IRS to apply section 6222 and consider the failure as resulting from a mathematical or clerical error, simplifying the assessment and collection process. We also believe that a partnership which timely and properly issues any required Adjustment K-1s should have no further liability regardless of any failure to report, calculate or pay by the affected partners for any reason.

12) Electronic submission of adjustment K-1s.

We recommend that the IRS establish procedures for electronic submission of Adjustment K-1s to partners, similar to existing rules for original Schedules K-1. Permitting electronic submission to the partners will ensure that Adjustment K-1s are issued and received by partners as expeditiously as possible.

13) Tax-exempt partners and penalties.

We recommend that the IRS does not require tax-exempt partners to pay any “allocable share” of penalties, except for the portion attributable to any UBTI included on their Adjustment K-1.

In the case of a tax-exempt partner who is not liable for tax on any portion of a pushed-out adjustment, imposition of any penalty is unfair and unreasonable. Unless a portion of the amount reported to a tax-exempt entity on an Adjustment K-1 is attributable to UBTI, that partner should not pay the allocable portion of any penalty.

Section 6227

The AICPA provides the following recommendations related to section 6227:

1) Push-out election for an AAR.

We recommend that the IRS Require that a partnership filing an AAR using Form 1065X, *Amended Return or Administrative Adjustment Request*, indicate on the form whether they elect to use the provisions of section 6226 to push-out the adjustments.

Under section 6232(a), a partnership filing an AAR must make a required payment with the filing of the return. To ensure that the IRS does not inadvertently issue an assessment or take any collection action, Form 1065X should include a way for the partnership to clearly indicate an election to apply the provisions of section 6226 to the AAR adjustments.

2) AARs which reduce taxable income.

We recommend that the IRS clarify that a partner reporting adjustments made to a prior year return as the result of an AAR push-out election, is permitted to take into account changes that decrease their tax liability for the year.

Section 6227(b) requires that any partnership filing an AAR which does not result in an imputed underpayment must use the provisions of section 6226 and push-out the adjustment to its partners. However, section 6226(b)(2) only allows partners to make an adjustment for amounts which would increase the tax imposed under Chapter 1. A strict reading of these two provisions would seemingly preclude either the partnership or its partners from benefitting from an AAR adjustment which reduced income or increased loss. This result should not have been the intended or desired. We recommend that the IRS clarify that a partner reporting pushed-out adjustments resulting from an AAR is allowed to take into accounts both increases and decreases to the tax imposed under Chapter 1 for all applicable years.

3) AARs and upper-tier partnerships.

We recommend that the IRS clarify that an upper-tier partnership receiving a notice of adjustments made by the filing of an AAR by a lower-tier partnership is allowed to file their own AAR using the provisions of sections 6227(a) and 6227(b).

We believe that in multi-tiered partnership structures, upper-tier partnerships receiving notice of a pushed-out adjustment resulting from an AAR should have the ability to push-out to their partners by filing their own AAR. We recommend that the IRS clarify that this ability exists under the Regime.

4) AARs and modifications of imputed underpayments.

We recommend that the IRS clarify which modifications of the imputed underpayment are allowed under section 6225(c) when filing an AAR and establish procedures and specific timelines to request these modifications similar to those established for modifications related to a NOPPA.

We recommend that the IRS clarify that a partnership filing an AAR and electing to pay the imputed underpayment may take advantage of the modifications allowed for tax-exempt partners, C corporation partners and for capital gains or qualified dividends attributable to an individual or S corporation partner.

5) Appeal of an AAR denial.

We recommend that the IRS allow a partnership denied an AAR, to avail themselves of all normal appeals procedures, including review by the Office of Appeals and filing an action in Tax Court.

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We recommend that the IRS include in regulations a clear statement that a partnership denied a request for an AAR is entitled to all normal appeals procedures and rights.

6) **Amended returns for partnerships electing out.**

We recommend that the IRS clarify that a partnership which has elected out of the Regime under section 6221(b) may file an amended return and amended Schedules K-1 using Form 1065X.

It would appear, that a partnership which has elected out of the Regime under section 6221(b) for a specific year has no available method of correcting an error on that year's return. We recommend that the IRS clarify the procedures such a partnership should follow to file an amended return.

CONCLUSION

We acknowledge the substantial amount of time, effort and attention to detail required by the IRS to invest in the development of a new Partnership Audit Regime. The AICPA is available to offer guidance as you continue to develop the necessary guidance. We share your goal of developing a fair, equitable and administrable system to audit, assess and collect the proper tax liability from partnerships and their partners, particularly in light of today's complicated tiered partnership structures.

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The AICPA is the world's largest member association representing the accounting profession, with more than 418,000 members in 143 countries 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. Please feel free to contact me at (801) 523-1051 or tlewis@sisna.com; Noel Brock, Chair, AICPA Partnership Taxation Technical Resource Panel, at (619) 300-1207 or noel@noelpbrock.com; or Jonathan Horn, Senior Technical Manager – AICPA Tax Policy & Advocacy, at (202) 434-9204 or jhorn@aicpa.org.

Respectfully submitted,



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cc: Ms. Rochelle Hodes, Attorney-Advisor, Office of Tax Legislative Counsel, Department of the Treasury
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