



January 8, 2020

The Honorable David J. Kautter
Assistant Secretary for Tax Policy
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

The Honorable Michael J. Desmond
Chief Counsel
Internal Revenue Service
1111 Constitution Ave, NW
Washington, DC 20224

Ms. Holly Porter
Associate Chief Counsel
Passthrough & Special Industries
Internal Revenue Service
1111 Constitution Ave, NW
Washington, DC 20224

RE: Comments on [Notice 2019-66](#) and Request for Similar Section 465 At-Risk Activities Reporting Relief for S Corporations

Dear Messrs. Kautter and Desmond, and Ms. Porter:

The American Institute of CPAs (AICPA) appreciates the efforts of the Department of the Treasury (“Treasury”) and the Internal Revenue Service (IRS) in issuing [Notice 2019-66](#) (the “Notice”) to provide – among other relief – a delay in certain reporting under section 465¹ at-risk activities until the taxpayer’s 2020 taxable year. We request that Treasury and IRS issue a notice clarifying that such reporting relief, or substantially similar, also applies to S corporations.

Overview

Recently released draft forms and instructions for partnerships and S corporations have increased the level of reporting expected for the 2019 taxable year, at a time when such taxpayers are expected to address volumes of additional guidance from Treasury and IRS specific to the recently enacted Tax Cuts and Jobs Act.

On December 9, 2019, Treasury and the IRS issued Notice 2019-66, providing temporary reporting relief for certain items that were considered the most burdensome to partnerships. The AICPA appreciates this relief, and we think that additional time for partnerships to comply with such provisions will result in better overall compliance.

¹ Unless otherwise indicated, references to a “section” are to a section of the Internal Revenue Code of 1986, as amended (the “Code”), and references to a “Treas. Reg. §” are to the Treasury regulations promulgated under the Code.

Recommendations

The Notice has created uncertainty as to whether the relief addressing the at-risk provisions of section 465 also applies to S corporations. The AICPA respectfully requests that Treasury and IRS provide guidance and relief from section 465 reporting for S corporations.

Specifically, the AICPA recommends that Treasury and the IRS:

1. Clarify that the portion of the Notice that provides reporting relief regarding section 465 at-risk activities also applies to S corporations; and
2. Issue additional guidance under section 465 reporting.

Analysis

The 2019 [Form 1120-S](#), U.S. Income Tax Return for an S Corporation, Item J, requires S corporations to indicate if they have aggregated activities for purposes of the at-risk limitation rules under section 465. Further, the draft of the [instructions](#) for the 2019 Form 1120-S (released October 16, 2019), includes additional language (at page 22) that expands upon the required reporting expected by an S corporation under section 465, including with respect to activity-by-activity tracking and reporting of distributions, shareholder loans, and contributions, etc. In addition, the 2019 [Schedule K-1](#) (Form 1120-S), Shareholder's Share of Income, Deductions, Credits, etc., includes a new box 18 for reporting situations where an S corporation has more than one activity for at-risk purposes. The draft [instructions](#) for the 2019 Schedule K-1 (released on October 21, 2019) require the S corporation to attach a statement for the shareholder when box 18 is selected.

Activity-by-activity detail reporting may create a reporting burden for many taxpayers. Each property held in an S corporation is arguably treated as a separate activity for purposes of section 465 (unless an aggregation rule applies). Reporting separate items (and distributions, loans, and contributions, etc.) from each property held in an S corporation is extremely cumbersome. Aggregating activities within one trade or business would reduce this burden, but it would require additional guidance. Because section 465 applies at the shareholder level, not the S corporation level, S corporations have not generally prepared a separate accounting for each activity held in the entity, but rather, have maintained at-risk information only where relevant.

On December 9, 2019, Treasury and the IRS issued Notice 2019-66 that provides specific relief to partnerships for reporting with respect to certain items under section 465 (among other items of reporting relief) until a partnership's 2020 taxable year. However, there is no reference in the Notice to similar relief for S corporations and, as a result, there is confusion as to whether such relief also (or should also) applies to S corporations.

From a policy perspective, Treasury and the IRS should provide similar reporting relief – on a temporary basis – to S corporations in the same manner as provided for partnerships. For both partnerships and S corporations, the objective is to ensure the efficient administration of the principles behind section 465. Further, as with partnerships, delaying the implementation of the additional section 465 reporting for S corporations, will provide additional time for such entities

to comply with the new reporting requirements in a manner that improves compliance and reduces administrative burdens and costs to S corporations and their shareholders.

For example, S corporations will need to educate shareholders about the additional reporting and the methodologies adopted by the S corporation to satisfy those requirements for shareholders to independently confirm these items. Taxpayers will need to apply, and preparers will need to advise their clients on, the additional reporting requirements with minimal guidance or standardization, which may create confusion both in the current year and future years. The benefit of reporting to the government in 2019 – without additional guidance – is limited to the extent that new reporting results in information that is incomplete or not in a format easily received and analyzed. Thus, both taxpayers and the government will benefit from a delay in implementation to develop guidance and information requests that result in standardized compliance and greater utility to the government.

As noted, many S corporations currently do not maintain all of the requested information in the format required by the draft forms and instructions. Taxpayers will need to gather historical information which taxpayers may not have available. If the new reporting requirements are not delayed, these S corporations may incur additional costs to gather and analyze, in a short period of time, the information required. A brief respite until an S corporation's 2020 taxable year will allow additional time to compile the necessary information in a more accurate, comprehensive, deliberate, and potentially less costly, manner.

The AICPA is the world's largest member association representing the CPA profession, with more than 429,000 members in the United States and worldwide, and a history of serving the public interest since 1887. Our members advise clients on federal, state and international tax matters and prepare income and other tax returns for millions of Americans. Our members provide services to individuals, not-for-profit organizations, small and medium-sized businesses, as well as America's largest businesses.

We appreciate your consideration of these comments and welcome the opportunity to discuss these issues further. If you have any questions, please contact Robert S. Keller, Chair, AICPA S Corporation Taxation Technical Resource Panel, at (504) 584-1030 or rkeller@kpmg.com; Eileen Sherr, AICPA Senior Manager – Tax Policy & Advocacy, at (202) 434-9256 or Eileen.Sherr@aicpa-cima.com; or me at (612) 397-3071 or Chris.Hesse@CLAconnect.com.

Sincerely,

A handwritten signature in blue ink that reads "Christopher W. Hesse". The signature is fluid and cursive, with a prominent "H" and "S" at the end.

Christopher W. Hesse, CPA
Chair, AICPA Tax Executive Committee

cc: The Honorable Charles P. Rettig, Commissioner, Internal Revenue Service

Ms. Kara Altman, Attorney, Office of Associate Chief Counsel (Passthroughs and Special Industries), Internal Revenue Service
Mr. Samuel Starr, Special Counsel, Office of Associate Chief Counsel (Passthroughs and Special Industries), Internal Revenue Service