



August 12, 2020

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

**RE: 2019 Tax Year Filing Guidance and Request for Additional Guidance Related to Instructions for Form 1065, *U.S. Return of Partnership Income*, and Penalty Relief**

Dear 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 developing and issuing additional guidance in the form of updated instructions to Form 1065, *U.S. Return of Partnership Income*, concerning the new 2019 tax year information requests on partnership tax returns. Penalty relief is requested related to the updated instructions posted on February 19, 2020 and online clarifications posted on the IRS website in March 2020.

Overview

The updated Form 1065 instructions and Frequently Asked Questions (FAQ) postings on the IRS website provide welcome clarity on many of the new reporting requirements that were initially introduced for the 2019 tax year. Notably, the updated instructions and clarifications provided updated guidance from the prior final version including:

- Disregarded entity partner reporting;
- Box 11-Code F and Box 13-Code V reporting for the current year income/loss effects from section 743(b)<sup>1</sup> adjustments;
- Box 20-Code AA used to report the net income/loss effect for all section 704(c) adjustments; and
- Box 20-Code AH reporting for section 743(b) adjustments

The final version of the Form 1065 instructions, dated February 13, 2020, was posted on the IRS website on February 19, 2020. The additional FAQ clarifications were posted to the IRS website in March of 2020. The timing of these guidance releases is cause for concern for many taxpayers that had already filed partnership tax returns before the additional guidance was issued and those that may have issued Schedules K-1 (Form 1065), *Partner's Share of Income, Deductions, Credits,*

---

<sup>1</sup> 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.

*etc.* to partners ahead of filing Form 1065 with the IRS. Even though reasonable efforts and interpretations were used in preparing these returns, based on the prior final version of the instructions, the reporting may not have been in accordance with the subsequent guidance that was issued.

### Recommendation

The AICPA requests that Treasury and the IRS issue guidance<sup>2</sup> providing taxpayers that filed Form 1065 for tax years beginning in 2019, penalty relief if the taxpayers filed using a reasonable interpretation of the final form instructions issued December 20, 2019.

### Analysis

Many taxpayers have reasonably relied on the final instructions issued on December 20, 2019 in the preparation of Form 1065 and Schedule K-1 (Form 1065). We suggest issuing guidance that allows taxpayers to rely on a reasonable interpretation of the final instructions issued on December 20, 2019 for tax years beginning in 2019. The guidance should formally recognize that a reasonable reporting method may be contrary to the updated instructions and examples issued in February 2020, and the additional clarifications posted on the IRS website in March 2020.

Additional guidance and examples released after the issuance of final forms and instructions and throughout the filing season places an undue burden on both practitioners and the IRS to comply with changing reporting requirements for taxpayers' returns depending on when the return was submitted or substantially completed. Accepting an earlier filed tax return (completed with reasonable interpretation of the guidance *at that time*) inconsistent with a later tax return completed with the benefit and clarity of additional guidance would give practitioners more certainty as to reasonable attempts to comply with the 2019 tax year filing requirements. This recommended guidance would also benefit the IRS in administering the 2020 filing season by reducing the burden in determining proper compliance. Otherwise, filing instruction changes during filing season will lead to taxpayers and preparers delaying preparation as they anticipate additional guidance.

\*\*\*\*\*

The AICPA is the world's largest member association representing the CPA profession, with more than 431,000 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 Sarah Anthony-Allen, Chair, AICPA Partnership Taxation Technical Resource Panel, at (547) 235-6818 or [sarah.anthony-](mailto:sarah.anthony-)

---

<sup>2</sup> The guidance should be issued in the form of a notice or other authoritative information release.

Ms. Holly Porter  
August 12, 2020  
Page 3 of 3

[allen@crowe.com](mailto:allen@crowe.com); Alexander Scott, AICPA Senior Manager – Tax Policy & Advocacy, at (202) 434-9204 or [Alexander.Scott@aicpa-cima.com](mailto:Alexander.Scott@aicpa-cima.com); or me at (612) 397-3071 or [Chris.Hesse@CLAconnect.com](mailto:Chris.Hesse@CLAconnect.com).

Sincerely,

A handwritten signature in blue ink that reads "Christopher W. Hesse". The signature is written in a cursive style with a horizontal line extending from the end.

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

cc: Mr. Samuel P. Starr, Special Counsel to the Associate Chief Counsel, Office of Associate Chief Counsel (Passthroughs & Special Industries), IRS  
Ms. Holly Paz, Director, LB&I Passthrough Entities Practice Area, IRS