



April 28, 2023

Mr. Cliff Scherwinski
Director
LB&I Passthrough Entities Practice Area
Internal Revenue Service
1111 Constitution Ave, NW
Washington, DC 20224

Ms. Kathryn Zuba
Associate Chief Counsel
Procedures and Administration
Internal Revenue Service
1111 Constitution Ave, NW
Washington, DC 20224

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

RE: Centralized Partnership Audit Regime, Including Related Forms and Schedules.

Dear Mr. Scherwinski, Ms. Zuba, and Ms. Porter:

The American Institute of CPAs (AICPA) is pleased to submit recommendations to improve the forms used to file an Administrative Adjustment Request (AAR) under Section 6227, and the forms used to “push-out” adjustments under Sections 6226 and 6227. Specifically, we offer recommendations to improve use of Form 8082, *Notice of Inconsistent Treatment or Administrative Adjustment Request (AAR)*, Form 1065-X, *Amended Return or Administrative Adjustment Request (AAR)*, Form 8985, *Pass-Through – Statement Transmittal/Partnership Adjustment Tracking Report (Required under Sections 6226 and 6227)*, Form 8985, *Pass-Through – Statement Transmittal/Partnership Adjustment Tracking Report (Required under Sections 6226 and 6227)* and Form 8986, *Partner’s Share of Adjustment(s) to Partnership-Related Item(s) (Required Under Sections 6226 and 6227)*. In addition, we offer general recommendations to improve the Centralized Partnership Audit Regime (CPAR) process under the Bipartisan Budget Act of 2015¹ (BBA).

Our comments and recommendations focus on the following areas:

- I. Include Illustrative Examples in the Instructions for Form 8082, Form 1065-X, Form 8985, and Form 8986
- II. Permit the Use of One Form for Both Electronically and Paper Filed AARs
- III. Allow Electronic Signatures on Form 8082 and Form 8985
- IV. Adopt the Proposed “AAR-EZ” Framework Previously Recommended by the AICPA
- V. Provide Guidance to Upper-Tier Partnerships that Receive Adjustments on Form 8986 Not Allocable to Partners

¹ P.L. 114-74.

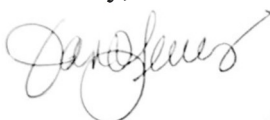
Mr. Cliff Scherwinski
Ms. Kathryn Zuba
Ms. Holly Porter
April 28, 2023
Page 2 of 2

- VI. Provide that an Upper-Tier Partnership is Considered to Have Taken into Account Adjustments on a Form 8986 Received from a Lower-Tier Partnership if the Upper-Tier Partnership Files an AAR and Incorporates the Lower-Tier Partnership's Adjustments into the Upper-Tier Partnership's AAR
- VII. Require Imputed Underpayment Computations on Administrative Adjustment Requests Only When the Partnership is Paying the Imputed Underpayment
- VIII. Clarify that Audited BBA Partnerships that Make Push-Out Elections are Only Required to Provide Form 8986 to Partners Who are Allocated Adjustments
- IX. Clarify the Adjustment Year in the Case of a BBA Partnership that has Terminated for Tax Purposes
- X. Add a Column to Report "As Corrected" Amounts on Form 8985 and Form 8986
- XI. Clarify the Proper Treatment of Information Reported on Form 8986, Part IV to a Disregarded Entity Partner

The AICPA is the world's largest member association representing the accounting profession, with more than 421,000 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 Jose Ramon Carrasco, Chair, AICPA Partnership Taxation Technical Resource Panel, at (202) 521-1552 or Jose.Carrasco@us.gt.com; Kristin Esposito, AICPA Director – Tax Policy & Advocacy, at (202) 434-9241 or Kristin.Esposito@aicpa-cima.com; or me at (601) 326-7119 or JanLewis@HaddoxReid.com.

Sincerely,



Jan Lewis, CPA
Chair, AICPA Tax Executive Committee

cc: Holly Paz, Acting Deputy Commissioner (LB&I), Internal Revenue Service
Drita Tonuzi, Deputy Chief Counsel (Operations), Internal Revenue Service

AMERICAN INSTITUTE OF CPAs
Centralized Partnership Audit Regime, Including Related Forms and Schedules.
April 28, 2023

Background

The BBA repealed the partnership audit provisions under the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) and introduced a new centralized partnership audit regime (CPAR) for Internal Revenue Service (IRS) audits of entities required to file Form 1065, *U.S. Return of Partnership Income*. The CPAR was intended to provide a mechanism for the IRS to audit partnerships more efficiently. The CPAR applies to partnerships that either cannot or choose not to opt out of the regime (“BBA partnerships”). The CPAR also modified how BBA partnerships can adjust previously filed partnership returns, requiring the submission of an Administrative Adjustment Request (AAR).

The AAR process requires a taxpayer to complete Form 8082 or Form 1065-X, and if applicable, Form 8985 and Form 8986 to push-out adjustments to its partners. Form 8082 is used when a partnership is filing an AAR electronically and Form 1065-X is used when the AAR is paper-filed. Form 8985 summarizes the adjustments, satisfies an upper-tier partner’s reporting obligation if the upper-tier partner is a passthrough partner, and transmits Forms 8986, which is used to report a partner’s share of adjustments to partnership-related items.

Form 8082 is also used by a partner to provide a notice of inconsistent treatment which indicates it is taking a position with respect to a partnership-related item that is inconsistent with the return, including the Schedules K-1, filed by the partnership.

Certain aspects of the CPAR have created inefficient and inconsistent reporting requirements. These issues have created confusion and frustration for taxpayers and tax practitioners, which is detrimental to taxpayer and tax practitioner attempts to utilize the regime properly. Also, there is a general lack of understanding of how to report adjustments on these forms and inconsistency in how adjustments are presented.

The AICPA is making the following recommendations, which if adopted should provide needed clarity and consistency, as well as ease the administrative challenges associated with preparing and filing these forms.

I. Include Illustrative Examples in the Instructions for Form 8082, Form 1065-X, Form 8985, and Form 8986

Overview

The instructions to Form 8082, Form 1065-X, Form 8985, and Form 8986 explain how adjustments should be reported; however, common reporting fact patterns are not addressed sufficiently. Specifically, instructions which address the complexities inherent in tiered partnership structure reporting are generally absent.

The instructions to Form 8985 and Form 8986 provide that amended Schedules K-1 are not to be provided to partners. Historically, partners have received amended Schedules K-1 to identify when adjustments have been made to an originally filed Schedule K-1. Since they will no longer receive amended Schedules K-1, partners may receive adjustments on Form 8986 without understanding how they must be reflected on their tax return.

Recommendation

The AICPA recommends that Treasury and the IRS provide comprehensive examples of reallocation and residual adjustments that carry through the respective instructions for Form 8082, Form 1065-X, Form 8985, and Form 8986. In addition, we recommend including examples of how a reallocation that creates both positive and negative adjustments should be reported and how adjustments should be reported in a tiered partnership.

Analysis

The IRS has provided comprehensive examples to aid in the completion of other forms related to the CPAR. For example, the instructions to Form 8978, *Partner's Additional Reporting Year Tax* provide a line-by-line example which exhibits how a partner reflects adjustments reported on Form 8986 in a reporting year. This example provides clarity and helps to ensure consistency in reporting. Additionally, the instructions to Form 8980, *Partnership Request for Modification of Imputed Underpayments Under IRC Section 6225(c)* contain a comprehensive example showing how a partnership completes a request for modification of an imputed underpayment (IU).

Providing illustrative examples with consistent facts to track adjustments through the CPAR adjustment process will provide taxpayers and tax practitioners with a framework to follow when navigating the regime. This framework will help alleviate inconsistent or inaccurate reporting and relieve frustration from tax practitioners as well as the IRS. Specifically, we request that examples address the following:

1. The Form 8082 instructions provide that if the partnership is filing an AAR, it is to enter the line number and description of the form for which it is making the change. Additionally, the instructions to Form 8985 and Form 8986 provide that the partnership is to list the line number of Schedule K-1 that was adjusted. These instructions imply that the net effect of adjustments to the components of a line item can be reflected as one adjustment. However, there may be instances in which a line item on Schedule K, Schedule K-1, or other schedules consists of multiple items of which the components are required to be taken into account separately. For example, Line 13W may contain several deductions. We suggest making it clear in the instructions that adjustments to the components of a certain line item may need to be listed separately, and that any example reflects this presentation.
2. The instructions to Form 8082 indicate that when determining an imputed underpayment, a reallocation adjustment results in two separate adjustments: one positive and one negative. However, the instructions to Form 8082 do not indicate that both the positive and negative adjustment should be reported on a separate line on Form 8082. Additionally, the instructions to Form 8985 provide that Part IV should include summary figures of the total

amounts of Forms 8986 related to Form 8985. One Form 8986 will reflect the positive side of a reallocation adjustment and another Form 8986 will reflect the negative side of the reallocation adjustment for a specific line item. The sum of the adjustments reflected on Forms 8986 is zero.

Even though there are general statements in the instructions that state that positive and negative adjustments from a reallocation cannot be netted, it is not clear whether the summary of the adjustments reflected on the summary forms, Form 8985 and Form 8082, should reflect an adjustment of zero, or whether each side of the reallocation adjustment should be shown as a separate line item. We recommend clarifying that each side of a reallocation adjustment should be reflected on a separate line. We also suggest providing an illustrative example.

3. The instructions to Form 8985, Part IV state that a partnership should include summary figures of the total amounts of Forms 8986 related to Form 8985. The instructions state: “For pass-through partners, the amounts in Part IV should equal the amounts shown on the Form 8986 that was received by the pass-through partner.” The instructions to Part IV, column (d), specify to enter the original aggregate amount reported to the partners on their Schedules K-1. The original amounts reported to the partners of the pass-through partner can include amounts from multiple sources and not solely amounts from the partnership that provided Form 8986. The instructions to Form 8985 should clarify that Part IV columns (f), (g), and (h) will equal the amounts shown on the Form 8986 received by the pass through partner. Part IV, Column (d) should reflect the aggregate amounts reported to the partners on their Schedules K-1 and not solely the amount from column (d) on the Form 8986 received by the pass-through partner. Including an example on tiered partnership adjustment reporting in the instructions to Form 8985 will provide clarity on how these adjustments should be reflected.

II. Permit the Use of One Form for Both Electronically and Paper Filed AARs

Overview

A partnership will use a different form depending on whether it is filing its AAR on paper or electronically. In addition, in the case of an electronically filed AAR, a combination of forms is used. Finally, Form 1065 and Form 8082, used file an AAR, serve multiple purposes. For example, Form 8082 is used for multiple filing purposes including: 1) an AAR under the BBA regime; 2) an AAR under the TEFRA regime; 3) for Electing Large Partnerships and REMICs. Form 8082 is also used to notify the IRS of an inconsistent position under BBA and TEFRA, and for other situations. In contrast, when paper filing a BBA AAR or a TEFRA AAR, the partnership must use Form 1065-X since it is not eligible to be e-filed. The lack of a single form, regardless of whether filing electronically or on paper, specifically for the BBA AAR, adds significant and unnecessary confusion and complexity for taxpayers. A single form for BBA AARs would simplify the IRS administrative processes as well.

Recommendation

The AICPA recommends that the IRS provide a single form the use of which is solely for the purpose of filing a BBA AAR and permitting it to be electronically filed.

Analysis

Simplifying the BBA AAR form will both improve the efficiency of a complicated regime and that of the IRS in processing AARs.

III. Allow Electronic Signatures on Form 8082 and Form 8985

Overview

As part of the IRS's response to the COVID-19 pandemic, several memorandums have been issued that provide for a deviation from handwritten signature requirements for certain tax forms, excluding Form 8082 and Form 8985.¹ The most recent memorandum² issued on November 18, 2021 ("Current Memorandum"), extends the temporary deviation until October 31, 2023.

Both Form 8082 and Form 8985 require a signature from the Partnership Representative (PR) or Designated Individual (DI). A Form 8985 filed by a pass-through partner must be signed by someone who has authority to sign the partnership return, or the PR or DI if the pass-through partner is a BBA Partnership.

Recommendation

The AICPA recommends that Treasury and the IRS provide guidance expanding the Current Memorandum to include Form 8082 and Form 8985. Additionally, we recommend allowing a digital or electronic signature on all related forms.³

Analysis

The same restrictions and concerns exist for obtaining handwritten signatures on Form 8082 and Form 8985 as with the other forms included in the Current Memorandum. As tax practitioners continue to navigate the changing landscape of the COVID-19 pandemic and the continued move towards a complete digital environment, we encourage the IRS to update its procedures to align with current market restrictions and conditions. Accordingly, we suggest that taxpayers be

¹ IRS memorandum (Control Number NHQ-01-0320-0001) dated March 27, 2020; IRS memorandum (Control Number NHQ-01-0620-0002) dated June 12, 2020; IRS memorandum (Control Number NHQ-10-1121-0005) dated August 28, 2020; IRS memorandum (Control Number NHQ-10-1220-0006) dated December 28, 2020; IRS memorandum (Control Number NHQ-01-0421-0001) dated April 15, 2021.

² IRS memorandum (Control Number NHQ-10-1121-0005).

³ This recommendation is consistent with AICPA's position that the IRS should expand the use of digital or electronic signatures.

permitted to use digital signatures on Form 8082 and Form 8985, which would also further the IRS's goal of expanding digitalization and modernizing forms to be more user-friendly.⁴

All passthrough partners that receive a Form 8986 must complete Form 8985 and provide Forms 8986 to its partners by the extended due date for the source partnership's return for the adjustment year. Additionally, tiered partnerships could have a compressed time frame within which to complete push-out adjustments. These partnerships must quickly complete and furnish push-out statements to partners or owners or pay an IU when there are unfavorable adjustments. The requirement to obtain a wet signature slows the process and creates an unnecessary burden on partnerships working to comply with the BBA regulations.

IV. Adopt the Proposed "AAR-EZ" Framework Previously Recommended by the AICPA

Overview

It is administratively cumbersome and time-consuming for partnerships and their representatives to complete and file AARs and burdensome for the IRS to process them. In addition, the complexity of the AAR process has made the cost of making minor adjustments to previously filed partnership returns, including adjustments not relevant in determining the tax liability of any partners, unreasonably high. Partnerships commonly need to self-correct previously filed returns for items that do not result in a change of tax. These factors discourage, rather than encourage, partnerships to file AARs to self-correct returns.

On May 25, 2021, the AICPA submitted a comment letter⁵ identifying several recommendations for alleviating the burden of following the AAR process in certain situations involving changes to ministerial or minor administrative items.

Recommendation

As per the AICPA's May 25, 2021, comment letter, we recommend that Treasury and the IRS issue guidance permitting taxpayers, in certain situations involving changes to ministerial or minor administrative items, to:

1. Attach certain corrected or previously omitted statements or schedules to Form 1065-X, or Form 1065 and Form 8082 filed as AARs instead of being required to complete the AAR in its entirety;⁶ and/or
2. File corrected Form 1065, including Schedule K-1, annotated at the top of the form with the clarifying language, "As Corrected."

⁴ See Publication 3744 (Rev. 4-2023), IRS Inflation Reduction Act Strategic Operating Plan FY 2023-2031, Initiative 1.2.

⁵ AICPA comment letter, [*"Changes to Simplify and Improve the AAR Process Under the Centralized Partnership Audit Regime and Proposed "AAR-EZ" Process Framework."*](#) dated May 25, 2021.

⁶ In filing AARs, we note that paper filers use Form 1065-X; electronic filers use Form 8082 with an amended Form 1065.

Analysis

The AICPA encourages the IRS to review the recommendations and analysis in the May 25, 2021, comment letter and consider providing guidance and updated instructions to improve and simplify the process of self-correcting partnership returns in certain situations.

V. Provide Guidance to Upper-Tier Partnerships that Receive Adjustments on Form 8986 Not Allocable to Partners

Overview

Form 8986 furnished by a BBA partnership reflects a partner's share of AAR or audit adjustments. A partner of an upper-tier partnership (UTP) that receives a Form 8986 must determine its partner's share of the adjustments allocated to such UTP.⁷ Each UTP partner's share of adjustments is determined in the same manner as each adjusted partnership-related item per the original allocation to each partner on the UTP's partnership return.⁸ However, certain types of adjustments cannot be allocated to any of the partners of a UTP. For example, a lower-tier partnership (LTP) may allocate a share of excess business interest expense (EBIE) to the UTP, but under the section 163(j) regulations,⁹ EBIE from the LTP should not be allocated to UTP's partners. Similarly, an UTP's share of LTP's loss may be suspended under section 704(d) to the extent the UTP does not have sufficient tax basis in its LTP interest at the end of the partnership tax year in which the loss is incurred. Any loss suspended by the UTP under section 704(d) is not allocated to the partners of the UTP.

Recommendation

The AICPA recommends that Treasury and the IRS provide guidance on how to account for or disclose adjustments that are not to be reported or allocated to partners under certain limitations.

Analysis

Without proper guidance, tax practitioner approaches to the treatment of adjustments not reported or allocated to partners varies, which creates confusion between the UTP and its partners, and may lead to incorrect results. Guidance on how to treat such limited items will provide clarity and reduce the risk of improper treatment.

⁷ Treas. Reg. § 301.6227-3(c)(3)(xi).

⁸ Treas. Reg. § 301.6227-1(e)(2).

⁹ Under the section 163(j) proposed regulations, any direct or indirect UTP would treat its share of any LTP business interest expense (BIE) paid or accrued, regardless of whether the BIE was characterized as deductible BIE or EBIE by the LTP, as a section 705(a)(2)(B) expenditure solely for purposes of section 704(b). This rule has not been adopted in the section 163(j) final regulations. Nevertheless, under the proposed or final regulations, an EBIE would not be allocated to the UTP until the EBIE is treated as paid or accrued to the extent the same partnership allocates the partner ETI or EBII in a future year.

VI. Provide that an Upper-Tier Partnership is Considered to have Taken into Account Adjustments on a Form 8986 Received from a Lower-Tier Partnership if the Upper-Tier Partnership Files an AAR and Incorporates the Lower-Tier Partnership's Adjustments into Upper-Tier Partnership's AAR

Overview

A UTP that receives a Form 8986 from an LTP must either push-out all adjustments reported to the UTP through Form 8986 or be liable for an IU on its share of the LTP adjustments. To effectively push-out all adjustments, the UTP is required to prepare a “pushout package” that includes all adjustments received from the LTP. This pushout package includes filing and furnishing Forms 8986 to the partners of the UTP.

However, a UTP that receives Form 8986 may also determine that the LTP's AAR adjustments cause the UTP's computations or allocations of its own partnership-related items to change. In this situation, the UTP may decide to file its own AAR for the same taxable year and incorporate the LTP AAR adjustments into the UTP's AAR. As part of its AAR, the UTP generally will issue Forms 8986 to its own partners.

The above situation may result in two Forms 8986 being furnished to the partners of a UTP: one Form 8986 that reflects the partners' share of the adjustments reported on the UTP's AAR and one Form 8986 that reflects the partners' share of the adjustments stemming from the LTP's AAR. If UTP's AAR incorporated the LTP's AAR adjustments, the two Forms 8986 may contain adjustments that are duplicative of one another. In some cases, the UTP's AAR Form 8986 may also include additional items that are not included on the LTP's AAR Form 8986. Furnishing Forms 8986 that contain duplicative adjustments may result in AAR adjustments inadvertently being duplicated at the partner level.¹⁰

Recommendation

The AICPA recommends that Treasury and the IRS revise the regulations under section 6227 or issue sub-regulatory guidance to provide that a UTP is considered to have taken into account adjustments reported on an LTP's Form 8986 if the UTP files its own AAR and incorporates adjustments from both sources into the UTP's AAR (i.e., the adjustments on the LTP's Form 8986 and the adjustments initiated by the UTP to its own items), such that the UTP furnishes a single Form 8986 to its partners.

Analysis

Allowing a UTP to account for adjustments received on an LTP's Form 8986 would obviate the need for the UTP to file and furnish two Forms 8986 and allow a single Form 8986 to be furnished by the UTP to its partners reflecting the partners' share of both the LTP and UTP AAR adjustments. This change would not only eliminate the risk of AAR adjustments being duplicated at the partner level, but also reduce the filing burden and risk of inaccurate reporting on UTPs.

¹⁰ The duplication of adjustments can create further complications in a highly tiered structure, as the adjustments move from each pass-through partner to the next pass-through partner.

Should this recommendation be adopted, the IRS may require information related to tracking the LTP adjustments, which can be provided on the AAR filed by the UTP.

VII. Require Imputed Underpayment Computations on Administrative Adjustment Requests Only When the Partnership is Paying the Imputed Underpayment

Overview

A partnership filing an AAR must determine whether the adjustments to the original return result in an IU. This determination is made on an item-by-item basis and the netting of most adjustments generally is not permitted. “Positive adjustments” increase income and gain or decrease a deduction, loss or credit. “Negative adjustments” increase a deduction, loss or credit, or decrease income or gain. After grouping and subgrouping to appropriately net the adjustments, the total of all positive adjustments must be multiplied by the highest rate under section 1 or section 11, and changes in credits and creditable expenditures are added or subtracted as appropriate, to calculate the imputed underpayment. Any net negative adjustments do not result in an imputed underpayment.

Any imputed underpayment must be paid by the partnership when it files the AAR or alternatively, it may elect to push-out the adjustments to the partners for the reviewed year. In the case of an AAR, adjustments that do not result in an imputed underpayment must be pushed out to the partners for the reviewed year.

The instructions for Form 8082 and Form 1065-X require that an imputed underpayment calculation be included with an AAR regardless of whether the partnership pays an imputed underpayment, pushes out the AAR adjustments, or in cases where the adjustments do not result in an imputed underpayment.

Computing the IU is complicated and burdensome. In addition, because the IU computation is determined based on the highest Chapter 1 tax rate in effect for the reviewed year and may include tax computed on non-income items (e.g., a change in a partner’s share of liabilities), the IU computation often results in an amount of tax that would be significantly more than the amount the ultimate partners would have paid if the adjusted items were taken into account correctly on the original return.¹¹

Recommendation

The AICPA recommends that the IRS update the Form 8082 and Form 1065-X instructions to only require an imputed underpayment calculation with the AAR when the partnership is paying an imputed underpayment.

¹¹ On December 8, 2022, Treasury and IRS released final regulations (“Special Enforcement Regulations”) excepting certain partnership-related items from the centralized partnership audit regime. The preamble to the Special Enforcement Regulations acknowledge that the imputed underpayment is “not designed to be exact amount of tax liability that would have been paid by the partners” and that “adjustments could result in imputed underpayment in situations where no income would have been recognized if the item had been correctly reported originally.”

Analysis

The benefit to the IRS of requiring an IU computation on an AAR when all adjustments are being pushed out is not evident from Treas. Reg. § 301.6227-2 or from the instructions to either Form 8082 or Form 1065-X. Additionally, given the complex and burdensome computation, there is no benefit to the taxpayer. The amount of an IU, and thus its computation, is relevant only where the partnership is paying the IU. If, instead, the partnership has elected to push-out adjustments to reviewed year partners, they must account for the AAR adjustments.

Also, unlike in the audit context, a partnership's ability to push-out AAR adjustments does not require the existence of an IU. Therefore, a computation to prove the existence of an IU on an AAR should not be required.

In addition to creating an administrative burden, the computation and reporting of an IU when all adjustments are being pushed out is a disincentive to filing AARs and making corrections. The difference between the IU and the partners' actual tax liability which will be accurately reflected by a push-out creates a false appearance that more tax is due. Although a partnership that completes a push-out is not be liable for the IU, Partnership Representatives may still be hesitant to file an AAR that includes an IU, particularly one that is grossly overreporting tax due, to avoid partner concerns or incorrectly assumed risk.

Regardless of the IU amount, the IU is irrelevant when the partnership makes a valid push-out in connection with an AAR. The actual amount of the IU, as opposed to its existence, only matters when the partnership is paying the IU amount.

VIII. Clarify that Audited BBA Partnerships that Make Push-Out Elections are Only Required to Provide Form 8986 to Partners Who are Allocated Adjustments

Overview

For an audited BBA partnership that has made an election under section 6226 to push-out its adjustments to its reviewed year partners, Treas. Reg. § 301.6226-2(a) provides that the partnership must furnish Form 8986 to each reviewed year partner. For a BBA partnership filing an AAR that elects or is required to push-out its adjustments to its partners, Treas. Reg. § 301.6227-1(d) provides that if a reviewed year partner is required to take into account the AAR adjustments, the partnership must furnish Form 8986 to such reviewed year partner.

The difference in language between Treas. Reg. § 301.6226-2(a) and Treas. Reg. § 301.6227-1(d) may lead to a different understanding of the partnership's obligation to push-out audit adjustments versus pushing out AAR adjustments. For example, a BBA partnership with 100 partners that files an AAR adjustment affecting only one partner may conclude that only a single Form 8986 must be filed and furnished to that one partner (i.e., the partner required to take into account the AAR adjustment). In contrast, the language in Treas. Reg. § 301.6226-2(a) could be read to require that an audited BBA partnership with the same adjustment would have to file and furnish 100 Forms 8986, one to each of its reviewed year partners.

Based on the fact that multiple imputed underpayments are contemplated by the regulations and are one of the types of modifications, allowing some adjustments to be pushed out to certain partners only and some adjustments to go into an IU computation which is paid by the partnership, it appears that the difference in language was not intended to require an audited BBA partnership to push-out adjustments to all partners, even those not allocated the adjustments.

Recommendation

The AICPA recommends that Treasury and the IRS clarify that in the case of a push-out a BBA partnership is only required to furnish Form 8986 to the reviewed year partners required to take into account the push-out adjustments. We also recommend a similar clarification for pass-through partners that receive a Form 8986.

Analysis

Voluntary adjustments by filing an AAR and mandatory adjustments under audit should have the same or similar reporting requirements. Requiring a partnership to furnish Form 8986 to partners not affected by the partnership adjustments is an unnecessary burden for both the partnership and its partners and does not appear to serve any purpose for the IRS either. Furthermore, requiring a partnership to furnish Forms 8986 to partners with no adjustments can create confusion to the recipient partner. For example, if the recipient partner is an UTP, such UTP will need to evaluate whether it needs to furnish Form 8986 to its partners, further cascading the effect of unnecessary and potentially confusing filings. Clarification of the rules will eliminate confusion and allow for consistent reporting.

IX. Clarify the Adjustment Year in the Case of a BBA Partnership that has Terminated for Tax Purposes

Overview

Section 6225(d)(2) and Treasury Reg. § 301.6241-1(a)(1) provide that the “adjustment year” is the partnership tax year in which the AAR is filed. Any direct or indirect passthrough partner of an AAR partnership may push-out their share of adjustments received on a Form 8986 until the extended due date of the adjustment year; otherwise, they are liable for an IU with respect to such adjustments. If a partnership terminates prior to filing an AAR or the IRS making adjustments, the partnership no longer has a “partnership taxable year” and therefore, there does not appear to be an “adjustment year” for BBA purposes. In addition, although the partnership has terminated for tax purposes, the partnership does not cease to exist for BBA purposes until the IRS determines the partnership ceases to exist.¹²

Recommendation

The AICPA recommends that Treasury and the IRS issue guidance clarifying the adjustment year in the case of a BBA partnership that has terminated for tax purposes.

¹² Treas. Reg. § 301.6241-3(b).

Analysis

The requirement for passthrough partners to push-out adjustments by the extended due date of the adjustment year is paramount to such partners avoiding unnecessary IU determinations. Any uncertainties or inconsistencies with determining the due date of such pushouts need to be eliminated to assure that such important deadlines are not inadvertently missed. The determined adjustment year should be assigned in a way that does not discourage the push-out of adjustments by passthrough partners.

X. Add a Column to Report “As Corrected” Amounts on Form 8985 and Form 8986

Overview

Form 8985 and Form 8986 display the original amount reported on the partner’s Schedule K-1 or the amount as previously corrected by the partnership (the “as reported amount”), and the reviewed year adjustments as finally determined (the “Adjustment”). Form 8082 and Form 1065-X report the same items but, include the corrected amount (i.e., the sum of the as reported amount and the Adjustment) (the “as corrected amount”).

The instructions to Form 8985 and Form 8986 provide that any Adjustments that increase a Schedule K-1 item as originally reported, or as corrected, must be shown as positive numbers. Similarly, any Adjustments that decrease a Schedule K-1 item must be shown as negative numbers. For example, an increase to an expense on Line 13A (cash contribution 50%) should be presented as a positive amount. Providing a positive Adjustment that decreases income has the potential to create confusion to partners receiving such Adjustments, even if the Adjustment has been reported correctly.

Recommendation

The AICPA recommends that Treasury and the IRS add a column to report “as corrected” amounts to Form 8985 and Form 8986, similar to Form 8082 and Form 1065-X.

Analysis

The presentation of Adjustments on Form 8985 and Form 8986 can be improved by adding an area to report “as corrected” amounts, which will reduce ambiguity determining the effect of such Adjustments. Partners that receive Form 8986 can more easily identify the proper effect of each Adjustment if the corrected amount of the adjusted item is provided. Furthermore, if a preparer of Form 8985 and Form 8986 does not report the Adjustment correctly, partners will still be able to determine the correct Adjustment comparing the “as reported” and “as corrected” amounts.

XI. Clarify the Proper Treatment of Information Reported in Form 8986, Part IV to a Disregarded Entity Partner

Overview

For the 2019 tax year, Schedule K-1 was updated to add a new check box to indicate if the partnership interest is owned through a disregarded entity (a “DE Partner”). Lines were added to the Schedule K-1 to request the DE Partner’s tax identification number (TIN) and name. The Schedule K-1 and the Form 1065 instructions make clear that the information reportable in Part II, Items E (SSN or TIN), F (name and address), and I1 (entity type) regarding the partner should not be that of the DE Partner but that of the beneficial owner of the DE Partner.

Form 8986 also requires the partnership to report the partner’s name and address, TIN, and entity type in Part IV, Item A, B, and D, respectively. Unlike Schedule K-1, there is no guidance to address partnership interests held through a DE.

Recommendation

The AICPA recommends that Treasury and the IRS clarify in the instructions to Form 8986 that, in the case of a partnership interest held by a DE partner, the information reported on Form 8986, Part IV should be that of the beneficial owner of the DE partner.

Analysis

By clarifying that the information of the beneficial owner of any DE partner should be reported on Form 8986, Part IV, ambiguity and confusion from both tax preparers and recipients of such forms will be reduced. Furthermore, this clarification will assist in tracing adjustments from Form 8986 to the proper returns.