



December 23, 2021

Ms. Holly Porter
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RE: Section 1061 Reporting Guidance Frequently Asked Questions (FAQs)

Dear Ms. Porter and Mr. Scherwinski:

The American Institute of CPAs (AICPA) is pleased to submit suggestions on the section 1061¹ reporting guidance issued for the upcoming 2021 tax year filing season in the form of [frequently asked questions](#) (FAQs).² The FAQs provide helpful information for taxpayers to comply with the final section 1061 regulations³ new reporting requirements. Passthrough Entities and Owner Taxpayers⁴ are required to apply the final regulations for tax years beginning after January 19, 2021. These taxpayers may, but are not required to, rely upon either the proposed⁵ or final regulations for the 2021 tax year. Due to the various options available to taxpayers for the 2021 tax year, the FAQs necessitate further refinement allowing taxpayers not choosing to apply the final regulations to effectively comply with the FAQs' requirements.

The AICPA's proposed clarifications and suggestions are as follows:

Remove the Requirement to Furnish Similar Information as Worksheet A for Taxpayers Not Applying the Final Regulations

The FAQs generally require Passthrough Entities that are not applying the final regulations to provide information to Applicable Partnership Interest (API) Holders containing similar information as Worksheet A.⁶ The AICPA recommends removing this "similar information" requirement for Passthrough Entities choosing not to apply the final regulations for tax years beginning before January 19, 2021, that are filed after December 31, 2021.

Because Worksheet A closely tracks the language of the final regulations, the "similar information" requirement creates substantial, additional complexity for taxpayers that are not applying the final regulations – this requirement, in essence, forces Passthrough Entities applying

¹ Unless otherwise indicated, all section references are to the Internal Revenue Code of 1986 (IRC or "Code"), as amended, or to the Treasury Regulations promulgated thereunder.

² Issued, and last reviewed or updated on November 3, 2021.

³ See TD 9945 (Jan. 19, 2021).

⁴ As defined in the final regulations.

⁵ See REG-107213-18 (Aug. 14, 2020).

⁶ Worksheet A is included in the FAQs.

different rules to fully understand the final regulations to determine the necessary information similar to Worksheet A that is required to be furnished and how those amounts are calculated. This requirement imposes a significant burden on certain taxpayers with little resulting benefit because various taxpayers will likely take different approaches to this requirement.

Alternatively, if this requirement is maintained, the AICPA recommends further clarifying that the Internal Revenue Service (IRS) will interpret “similar information” broadly, such that taxpayers attempting good faith compliance will be treated as complying with the FAQs’ requirements.⁷

Allow Passthrough Entities to Furnish Worksheet A to All Partners

The AICPA recommends the IRS issue additional guidance clarifying that, for the 2021 tax year, Passthrough Entities may (but are not required to) provide the information in Worksheet A to all partners, regardless of whether the partnership has issued APIs to all partners.

Regulation § 1.1061-6 generally requires a Passthrough Entity to provide information only to direct API Holders unless an upper-tier Passthrough Entity requests information in accordance with procedures outlined in the final regulations. For the 2021 tax year, because of the options available to taxpayers, upper-tier Passthrough Entities may not be following the final regulations and therefore may not request information in accordance with the final regulations. Allowing Passthrough Entities the option to provide Worksheet A or similar information to all partners will alleviate unnecessary complexity and insufficient information for upper-tier API Holders while also minimizing the need for subsequent requests for additional information from lower-tier Passthrough Entities.

The IRS should also state that no inference will be drawn as to whether the partner is or is not an API Holder for the 2021 tax year simply because a Passthrough Entity provides information to all partners for consistent and simplified reporting. For tax years beginning after January 19, 2021, upper-tier Passthrough Entities will be following the methodology outlined in the final regulations, meaning this administrative convenience and clarification will no longer be necessary for future years.

Acknowledge that Taxpayers May be Following Different Methodologies

The AICPA recommends the IRS clarify the FAQs acknowledging that an upper-tier partnership and/or its partners may be following different regulations or rules than a lower-tier passthrough entity.

Taxpayers may choose various methodologies for the 2021 tax year in computing amounts under section 1061 and therefore the information utilized by the partner may not match the information provided by a Passthrough Entity on Worksheet A. Further, a partner using different information

⁷ Taxpayers must still disclose whether the information was determined under the proposed regulations or another method as required in the FAQs.

Ms. Holly Porter
Mr. Cliff Scherwinski
December 23, 2021
Page 3 of 3

because that partner is following a different section 1061 methodology should not be considered filing inconsistent with the Schedule K-1 provided by the partnership.⁸

Clarify Reported Amounts on Worksheet A, Line 2

The AICPA recommends clarifying the Worksheet A, Line 2 amount to properly reflect only those items included on Worksheet A, Line 1.

Worksheet A, Line 1 requires a partnership to report the net long-term capital gain or loss from Schedule K-1, Line 9(a). Worksheet A, Line 2 then adjusts for gains or losses not subject to section 1061 under Reg. § 1.1061-4(b)(7), including section 1231 gains/losses, section 1256 gains/losses, and qualified dividends which are not reported on Schedule K-1, Line 9(a). As a result, Worksheet A, Line 2 would adjust for items that are not included in Worksheet A, Line 1. Worksheet A should be clarified such that Line 2 should only include items included on Line 1.

The AICPA is the world's largest member association representing the accounting profession, with more than 428,000 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 Joseramon Carrasco, Chair, AICPA Partnership Taxation Technical Resource Panel, at (202) 521-1552 or jose.carrasco@us.gt.com; Alexander Scott, AICPA Senior Manager – Tax Policy & Advocacy, at (202) 434-9204 or Alexander.Scott@aicpa-cima.com; or me at (601) 326-7119 or JanLewis@HaddoxReid.com.

Sincerely,



Jan Lewis, CPA
Chair, AICPA Tax Executive Committee

⁸ Partners must generally file consistently with the partnership return absent a Notice of Inconsistent Treatment. See generally Reg. § 301.6222-1.