IRS Relief for Partnerships Wanting to Amend Tax Returns

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On April 8, 2020, the Internal Revenue Service (IRS) released Revenue Procedure 2020-23 (the Revenue Procedure) allowing eligible partnerships subject to the centralized partnership audit regime (CPAR) to amend 2018 and 2019 returns instead of filing Administrative Adjustment Requests (AARs).

Responding to the effects of COVID-19, the Federal government passed numerous taxpayer benefits under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). Among its many provisions, the CARES Act includes corrections to what is known as the “retail glitch” from the Tax Cuts and Jobs Act of 2017 (TCJA). The wording of the TCJA prevented qualified improvement property (QIP) placed in service in 2018 and subsequent years from being eligible for bonus depreciation, leaving it to be depreciated over 39 years. The CARES Act corrects this technical glitch and now allows for QIP to be immediately expensed as bonus depreciation. The provision is retroactive to the date of the enactment of the TCJA. The CARES Act also increases the business interest deduction limitation from 30 to 50 percent of adjustable taxable income for tax years 2019 and 2020, providing special rules for partnerships.

Prior to the Revenue Procedure, partnerships subject to the CPAR (so called “BBA Partnerships” after the Bipartisan Budget Act of 2015 implementing the CPAR) and wanting to benefit from the CARES Act provisions were prevented from filing amended returns. Instead, they were required to file an Administrative Adjustment Request (AAR). Thus, without the option to file an amended return, partnerships that had already filed their Forms 1065 for the 2018 and 2019 tax years were generally unable to take advantage of the CARES Act relief except by filing an AAR. The result of filing an AAR in 2020 is that partners would generally not have been able to take advantage of CARES Act benefits until they filed their 2020 year returns, which could be in 2021, significantly delaying the intended relief of the CARES Act.

Therefore, in order to accelerate the intended benefits of the CARES Act for partnerships and their partners, the IRS released the Revenue Procedure. The Revenue Procedure provides the option for eligible partnerships to file an amended return instead of an AAR, while still not preventing a partnership from filing an AAR if desired. Eligible partnerships are BBA Partnerships that filed Forms 1065 and furnished Schedules K-1 for partnership taxable years beginning in 2018 or 2019 prior to the issuance of the Revenue Procedure. Such partnerships may file amended partnership returns for the 2018 and 2019 tax years and furnish corresponding Schedules K-1 **before September 30, 2020**.

The amended returns may take into account provisions under the CARES Act as well as any other tax attributes that the partnership is entitled to by law. If a partnership applied the rules of the proposed global intangible low-taxed income (GILTI) regulations, Prop. Reg. 1.951A-5, pursuant to Notice 2019-

26, for its tax years ending before June 22, 2019, the partnership may continue to do so for purposes of filing an amended return under the Revenue Procedure. The partnership must furnish amended Schedules K-1 consistent with those proposed regulations and provide appropriate notifications to the its partners under Notice 2019-46 and the Revenue Procedure.

Partnerships filing amended returns pursuant to the Revenue Procedure are still subject to the CPAR. An eligible partnership that previously filed an AAR that now wishes to file an amended return pursuant to the Revenue Procedure, for the same taxable year, should use the items as adjusted in the AAR, where applicable, in lieu of reporting from the originally filed partnership return. For purposes of Section 6222, the amended return replaces any prior return (including any AAR filed by the partnership) for the taxable year for purposes of determining the partnership's treatment of partnership-related items.

Those seeking the Revenue Procedure in its full form can find it here.

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