

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.601. Rules and regulations.
(Also Part I, §§ 6031, 6222, 6227.)

Rev. Proc. 2020-23

SECTION 1. PURPOSE

This revenue procedure allows eligible partnerships to file amended partnership returns for taxable years beginning in 2018 and 2019 using a Form 1065, U.S. Return of Partnership Income (Form 1065), with the “Amended Return” box checked, and issue an amended Schedule K-1, Partner’s Share of Income, Deductions, Credits, etc. (Schedule K-1), to each of its partners. The option to file amended returns only applies to partnerships satisfying the requirements of section 3 of this revenue procedure.

SECTION 2. BACKGROUND

.01 Section 1101(a) of the Bipartisan Budget Act of 2015 (BBA), P.L. 114-74, Title XI (November 2, 2015), replaced subchapter C of chapter 63 of subtitle F of the Internal Revenue Code (Code) effective for partnership taxable years beginning after December 31, 2017. Prior to the enactment of the BBA, subchapter C of chapter 63 contained the unified partnership audit and litigation rules enacted by the Tax Equity

and Fiscal Responsibility Act of 1982 (TEFRA), P.L. 97–248 (September 3, 1982), that were commonly referred to as the TEFRA partnership procedures. Section 1101(c) of the BBA replaced the TEFRA partnership procedures with a centralized partnership audit regime that, in general, determines, assesses, and collects tax at the partnership level. The centralized partnership audit procedures enacted by the BBA are found at sections 6221 through 6241 of the Code. The centralized partnership audit procedures apply to all partnerships, unless the partnership makes a valid election under section 6221(b) not to have those procedures apply. Partnerships subject to the centralized partnership audit regime are referred to as BBA partnerships.

.02 Section 6031(a) of the Code requires every partnership to file a return for each taxable year stating the items of its gross income and the deductions allowable by subtitle A of the Code and such other information as required by forms and regulations, including information about the partners in the partnership. For a partnership, the return required by section 6031(a) is Form 1065, which includes Schedules K-1. Schedule K-1 reports the partner's name, taxpayer identification number, and distributive share of partnership-related items and other information related to the partner's interest in the partnership. Section 6031(b) requires that a partnership required to file a return under section 6031(a) furnish a copy of the Schedule K-1 to each partner that includes such information as may be required to be shown by regulations. In general, section 6031(b) also prohibits BBA partnerships from amending the information required to be furnished to their partners after the due date of the return, unless specifically provided by the Secretary of the Treasury or his delegate. This revenue procedure exercises that

authority to allow a BBA partnership to file an amended partnership return and issue amended Schedules K-1 under the circumstances described in this revenue procedure.

.03 Section 6222(a) of the Code requires partners in a BBA partnership to treat partnership-related items, as defined in section 6241 and the corresponding regulations, consistently on the partner's return with how the BBA partnership treated such items on its return. This consistency requirement generally applies to all partners. Consistent treatment with the partnership generally requires that partners in a BBA partnership file their returns consistent with the information reported to them on the Schedule K-1.

.04 The Coronavirus Aid, Relief, and Economic Security Act (CARES Act), P.L. 116-136, 134 Stat. 281 (March 27, 2020), provides retroactive tax relief that affects partnerships, including relief for the taxable years ending in 2018, 2019, and, in some cases, 2020. Without the option to file amended returns, as granted in section 3 of this revenue procedure, BBA partnerships that already filed their Forms 1065 for the affected years generally are unable to take advantage of the CARES Act relief for partnerships except by filing Administrative Adjustment Requests (AARs) pursuant to section 6227. Filing an AAR would result in the partners' only being able to receive any benefits from that relief on the current taxable year's federal income tax return. Thus, if an AAR were filed, the partners generally would not be able to take advantage of CARES Act benefits from an AAR until they file their current year returns, which could be in 2021. This process would significantly delay the relief provided in the CARES Act intended to apply to the affected taxable years and provide an immediate benefit to taxpayers.

.05 This revenue procedure allows BBA partnerships the option to file an amended return instead of an AAR, though it does not prevent a partnership from filing an AAR to obtain the benefits of the CARES Act or any other tax benefits to which the partnership is entitled. A BBA partnership that files an amended return pursuant to this revenue procedure is still subject to the centralized partnership audit procedures enacted by the BBA.

SECTION 3. OPTION PROVIDED TO ELIGIBLE BBA PARTNERSHIPS FOR THE 2018 AND 2019 TAXABLE YEARS

.01 Scope. The filing and furnishing option provided by section 3.02 of this revenue procedure applies to BBA partnerships described in section 3.03 of this revenue procedure for the taxable years described in section 3.04 of this revenue procedure.

.02 Option to file amended return. BBA partnerships that filed a Form 1065 and furnished all required Schedules K-1 for the taxable years beginning in 2018 or 2019 prior to the issuance of this revenue procedure may file amended partnership returns and furnish corresponding Schedules K-1 before September 30, 2020. The amended returns may take into account tax changes brought about by the CARES Act as well as any other tax attributes to which the partnership is entitled by law.

.03 Eligible BBA partnerships. The filing and furnishing option provided in section 3.02 of this revenue procedure is available only to BBA partnerships that filed Forms 1065 and furnished Schedules K-1 for the partnership taxable years beginning in 2018 or 2019 prior to the issuance of this revenue procedure. 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. See section 4.03 of this revenue procedure for a special rule regarding partnerships who have previously filed AARs for an affected taxable year.

.04 Eligible taxable years. The filing and furnishing option provided in this revenue procedure applies only to partnership taxable years that began in 2018 or 2019.

SECTION 4. PROCEDURE

.01 Filing requirements. To take advantage of the option to file an amended return provided by section 3 of this revenue procedure, a BBA partnership must file a Form 1065 (with the “Amended Return” box checked) and furnish corresponding amended Schedules K-1. The BBA partnership must clearly indicate the application of this revenue procedure on the amended return and write “FILED PURSUANT TO REV PROC 2020-23” at the top of the amended return and attach a statement with each Schedule K-1 sent to its partners with the same notation. The BBA partnership may file electronically or by mail, but filing electronically may allow for faster processing of the amended return.

.02 Special rule for BBA partnerships whose returns are under examination. If a BBA partnership is currently under examination for a taxable year beginning in 2018 or 2019 and wishes to take advantage of the option to file an amended return provided by section 3 of this revenue procedure, the partnership may only do so if the partnership sends notice to the revenue agent coordinating the partnership’s examination in writing that the partnership seeks to use the amended return option described in this revenue procedure prior to or contemporaneously with filing the amended return as described in section 4.01 of this revenue procedure. The partnership must also provide the revenue agent with a copy of the amended return upon filing.

.03 Special rule for BBA partnerships who have previously filed an AAR. If a BBA partnership has previously filed an AAR and wishes to file an amended return pursuant to this revenue procedure for the same taxable year, the partnership should use the items as adjusted in the AAR, where applicable, in lieu of any reporting from the originally filed partnership return.

.04 Coordination with Notice 2019-46. If, under Notice 2019-46, 2019-37 I.R.B. 695, a partnership has applied the rules of the proposed GILTI regulations under proposed §1.951A-5 for its taxable years ending before June 22, 2019 (Form 1065, Form 8992, U.S Shareholder Calculation of Global Intangible Low-Taxed Income (GILTI), and Schedules K-1), the partnership may continue to apply the rules of proposed §1.951A-5 for purposes of filing an amended Form 1065 for such taxable years under this revenue procedure if the partnership furnishes amended Schedules K-1 consistent with those proposed regulations and provides appropriate notifications to its partners under the principles of section 5.01 of Notice 2019-46 within the period described in section 3.02 of this revenue procedure. Nothing in this revenue procedure changes a partnership's obligation to provide information described in section 5.02 of Notice 2019-46. If a partnership applies the final GILTI regulations under §1.951A-1(e), any amended Schedules K-1 issued under this revenue procedure must be consistent with those final regulations.

SECTION 5. DRAFTING INFORMATION

The principal author of this revenue procedure is Joy E. Gerdy Zogby of the Office of the Associate Chief Counsel (Procedure and Administration). For further information, please contact 202-317-4927 (not a toll-free call).