

IRS Issues First Partnership Audit Regulations

August 8, 2016

On August 4, 2016, the Treasury Department issued its first temporary regulations under the new partnership audit and collection regime found in the Bipartisan Budget Act of 2015 (“BBA”). For partnership tax procedure practitioners, the regulations are interesting reading. *The new regulations provide insights into the internal deliberations and policy goals at Treasury and IRS headquarters.*

The new regulations relate to the “early opt-in” option—that is, despite the January 1, 2018 effective date, the BBA provides that partnerships and LLCs may opt-in to the new regime before the January 1, 2018 date. The preamble addresses what I’ve mentioned on panels before the ABA Tax Section and the DC Bar Tax Section—that a partnership possibly “could” do an “early opt-in” to the new regime so that it could opt-out of the regime under section 6221(b). Therefore, the audit of the partnership with less than 100 partners would have to be conducted under the pre-TEFRA rules. The preamble nixes this strategy.

Interestingly, the new regulations provide that a partnership or LLC can only elect into the BBA rules early if the IRS notifies the partnership or LLC that it has been selected for examination. The regulations discuss how the early opt-in election is to be made, to whom the early opt-in election is sent, and what the early election opt-in must say. Furthermore, the regulations require that the partnership certify that it is solvent, does not reasonably expect to become insolvent, and has the money to pay any potential tax underpayment. If the partnership is not selected for audit, it can still do an early opt-in election if it wishes to file an administrative adjustment request (“AAR”).

Finally, and quite relevant for www.partnershiprepresentative.com, the preamble states that “[t]he Treasury Department and the IRS expect to issue additional guidance regarding designation of a partnership representative, including who is eligible to be a partnership representative, under section 6223 as amended by the BBA.” Of course, any entity that opts-in to the new regime must designate a partnership representative at that time.

For further information, please contact [Charles M. Ruchelman](mailto:cruchelman@capdale.com) at cruchelman@capdale.com / 202.862.7834, or visit www.partnershiprepresentative.com for tools and resources, including legal resources, alerts and articles, and past and upcoming events.



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