



June 13, 2017

The Honorable Steven T. Mnuchin
Secretary of the Treasury
Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, DC 20220

The Honorable John A. Koskinen
Commissioner
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, DC 20224

Mr. Thomas C. West
Acting Assistant Secretary for Tax Policy
Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, DC 20220

Mr. William M. Paul
Acting Chief Counsel
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, DC 20224

Re: Request for Delay in Effective Date on Partnership Audit Provisions in the Bipartisan Budget Act of 2015

Dear Messrs. Mnuchin, Koskinen, West and Paul

The [Bipartisan Budget Act of 2015](#) (the “Act”) established a new “Centralized Partnership Audit Regime” (the “Regime”) to replace the existing procedures, commonly referred to as the TEFRA¹ regime. The Act established the effective date for this change as generally tax years beginning after December 31, 2017.

The American Institute of CPAs (AICPA) respectfully requests that the United States Department of the Treasury (“Treasury”) and the Internal Revenue Service (IRS) work with Congress to enact legislation to delay this effective date for one year until December 31, 2018. This new Regime represents a significant departure from previous law. It will require a substantial effort on the part of Treasury, the IRS, the tax practitioner community and the affected taxpayers (which includes virtually every partnership and their partners) to develop and comply with new rules, regulations and procedures to establish a fair, equitable and administrable Regime.

The process of developing the necessary framework to operate the Regime is still in an early stage. The AICPA believes that it is unlikely that all the procedures and guidance necessary for taxpayers to make informed decisions regarding its provisions will be established before the current effective date at the end of this year.

¹ [Tax Equity and Fiscal Responsibility Act of 1982](#).

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In order to effectuate this delay, four slight changes to section 1101 of the Act are needed. We provide our suggested revisions to the Act below, followed by several specific issues and concerns that warrant delaying the effective date.

AICPA Recommended Revisions to Delay Effective Date

Public Law No. 114-74 - BIPARTISAN BUDGET ACT OF 2015

SEC. 1101. PARTNERSHIP AUDITS AND ADJUSTMENTS.

“(g) (1) In general. --Except as otherwise provided in this subsection, the amendments made by this section shall apply to returns filed for partnership taxable years beginning after December 31, ~~2017~~ 2018.

(2) Administrative adjustment requests. --In the case of administrative adjustment request under section 6227 of such Code, the amendments made by this section shall apply to requests with respect to returns filed for partnership taxable years beginning after December 31, ~~2017~~ 2018.

(3) Adjusted partners statements. --In the case of a partnership electing the application of section 6226 of such Code, the amendments made by this section shall apply to elections with respect to returns filed for partnership taxable years beginning after December 31, ~~2017~~ 2018.

(4) Election. --A partnership may elect (at such time and in such form and manner as the Secretary of the Treasury may prescribe) for the amendments made by this section (other than the election under section 6221(b) of such Code (as added by this Act)) to apply to any return of the partnership filed for partnership taxable years beginning after the date of the enactment of this Act and before January 1, ~~2018~~ 2019.”

Red ~~strike-through~~ represents deleted language.

Red represents new language.

Issues and Concerns Supporting a Delay in Effective Date

1) Necessary Regulations Have Not Been Issued by Treasury and the IRS

On January 18, 2017, Treasury and the IRS issued a Notice of Proposed Rulemaking (REG-136118-15) for this new “Centralized Partnership Audit Regime.” Those proposed regulations were not submitted to the Federal Register prior to a regulatory freeze imposed by the new administration and have since been withdrawn. It remains unclear when the Treasury and the IRS will reissue these proposed regulations and publish them in the Federal Register.

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Typically, Treasury and the IRS allow a 90-day comment period on proposed regulations, followed by a public hearing. Even if the period were reduced to 60 days, the earliest a public hearing could occur is sometime in late August. That schedule would allow Treasury and the IRS a mere four months to review and analyze the substantial number of public comments anticipated from tax practitioners, affected taxpayers and other interested parties, prepare substantive responses to these comments, and draft a new regulatory preamble and, presumably, temporary regulations.

Issuance of temporary regulations mere days, weeks or even months prior to their effective date for a procedural section of the Internal Revenue Code which will require significant and immediate decisions by taxpayers is inefficient and imposes undue burdens on taxpayers and the IRS.

2) The Withdrawn Regulations Contained Significant Gaps

Even if taxpayers were willing to take actions and make decisions based on the proposed and then withdrawn regulations, there are significant areas of concern with them. For example, the critical question of how to apply adjustments to partners' outside basis and capital accounts, as well as the partnership's basis and book values, was reserved. Without any guidance on how the new Regime will affect such basic elements of subchapter K, taxpayers are unable to make informed decisions, particularly on needed revisions to their partnership agreements.

3) Proposed Technical Corrections Bill Would Clarify and Modify Elements of the Regime

On December 6, 2016, the Tax Technical Corrections Act of 2016 (the "Bill") was introduced in the 114th Congress as H.R. 6439² and S. 3506³ on a bipartisan, bicameral basis. The Bill would directly impact and significantly change portions of the Regime. These changes provide improvements to the IRS's ability to fairly and equitably administer the new regime, while reducing the administrative burdens on both the IRS and taxpayers. They also provide additional certainty to taxpayers regarding their obligations following an examination, while better assuring that the proper amount of tax is imposed on the appropriate taxpayer.

The proposed (and subsequently withdrawn) regulations reference the possibility that enactment of the technical correction provisions in the Bill may occur and the likely need to modify and re-issue portions of the regulations after these technical corrections are enacted.

4) The Impact on Financial Reporting Standards Remains Unclear

Partnerships preparing financial statements under Generally Accepted Accounting Principles (GAAP) will require guidance on how to report not only actual assessments imposed and paid, but

² [H.R. 6439 - Tax Technical Corrections Act of 2016.](#)

³ [S. 3506 - Tax Technical Corrections Act of 2016.](#)

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potential future examinations and assessments. As an example, the relevance of ASC 740, *Income Taxes*⁴, and FAS 5, *Accounting for Contingencies*⁵ are among the concerns that accounting professionals have raised.

There remains a significant lack of clarity and substantive disagreements among tax and accounting professionals on the question of whether payments made to the IRS as a result of examinations under the new Regime represent obligations of a partnership or merely payments by a partnership on behalf of its partners. Given the multitude of elections available to a partnership following an assessment under the new Regime, different and even multiple answers to that question are possible for each examination.

Should the Regime take effect as scheduled, guidance under GAAP would need to exist in time for entities preparing financial statements covering periods ending as soon as March 31, 2018. We believe it unrealistic to expect the accounting standards setters to respond by that time, given the lack of clarity from Treasury and the IRS on the effect of adjustments on the basic elements of subchapter K we identified in issue number 2 above.

5) Partnerships Need to Amend or Draft Their Partnership Agreements for the New Regime

Virtually every partnership currently operating in the United States (U.S.), regardless of size, will need to amend its partnership agreement to reflect provisions of the new Regime. Perhaps most importantly, they will need to establish procedures for appointing, replacing and working with the new Partnership Representative which replaces the existing Tax Matters Partner in dealing with the IRS.

Absent even temporary regulations, it is not realistic for attorneys and accountants to accurately determine the proper provisions for each of their partnership clients. Indemnity provisions, claw-back provisions, notice provisions, mandatory election provisions and other important provisions need to undergo discussion, drafting and approval by every partner. Many of these provisions should properly take effect prior to the beginning of any tax year covered by the new Regime, meaning by January 1, 2018. There is near unanimous agreement in the tax practitioner community that this timeframe is simply not feasible.

6) The Impact on State Tax Law Remains Uncertain

Most states have no current provision allowing them to collect an audit assessment directly from a partnership operating within their borders. How the states are informed of the results of IRS audits under the new Regime, as well as what new policies and procedures they must enact into

⁴ [Financial Accounting Standards Board Accounting Standards Codification 740.](#)

⁵ [Statement of Financial Accounting Standards No. 5.](#)

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law to enable them to receive the correct additional state tax on their appropriate share of any adjustment are two examples of the concerns facing every state tax department.

The Multi-State Tax Commission along with a number of interested parties, including the AICPA, have begun to address these issues and possibly develop a model response. However, the complexities of developing a system that provides fairness and ease of administration to both taxpayers and the tax agencies requires substantial time and resources. Attempting to address these issues while substantial uncertainty remains on how the new Regime will work at the federal level further complicates and delays the task.

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The AICPA is the world's largest member association representing the accounting profession, with more than 418,000 members in 143 countries 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. Please feel free to contact me at (408) 924-3508 or Annette.Nellen@sjsu.edu; Michael Greenwald, Chair, AICPA Partnership Taxation Technical Resource Panel, at (212) 842-7513 or MGreenwald@friedmanllp.com; or Jonathan Horn, Senior Manager – AICPA Tax Policy & Advocacy, at (202) 434-9204 or jonathan.horn@aicpa-cima.com.

Respectfully submitted,



Annette Nellen, CPA, CGMA, Esq.
Chair, AICPA Tax Executive Committee

cc: The Honorable Kevin Brady, Chairman, House Committee on Ways & Means
The Honorable Richard E. Neal, Ranking Member, House Committee on Ways & Means
The Honorable Orrin G. Hatch, Chairman, Senate Committee on Finance
The Honorable Ronald L. Wyden, Ranking Member, Senate Committee on Finance