

Part III – Administrative, Procedural, and Miscellaneous

Penalty Relief for Missing Negative Tax Basis Capital Account Information

Notice 2019-20

This Notice provides penalty relief under sections 6722 (failure to furnish correct payee statements); 6698 (failure to file partnership return); **section 6038(b) and (c) (failure to furnish information with respect to certain partnerships) of the Internal Revenue Code (Code); and any other section of the Code for filing or furnishing Schedules K-1 or other forms or statements**, where a penalty is imposed solely as a result of failing to include information about partners' negative tax basis capital accounts for taxable years that began after December 31, 2017, but before January 1, 2019.

BACKGROUND

Item L of Schedule K-1 to Form 1065 and **Item F of Schedule K-1 to Form 8865** require reporting a partner's capital account. Generally, a partnership may report partner capital to a partner using tax basis, Generally Accepted Accounting Principles, section 704(b) book, or some other method. Pursuant to updates, the 2018 Instructions for Form 1065 and Partner's Instructions for Schedule K-1 (Form 1065) to Item L now require a partnership that does not report tax basis capital accounts to its partners to

report, on line 20 of Schedule K-1 (Form 1065) using code AH, the amount of such partner's tax basis capital both at the beginning of the year and at the end of the year if either amount is negative (negative tax basis capital account information). **The Instructions for Form 8865, Schedule K-1, incorporate this requirement by reference to the Instructions for Form 1065.**

The Treasury Department and Internal Revenue Service (IRS) have become aware that certain **persons** and partnerships may be unable to comply timely with this new requirement.

PENALTY RELIEF

The IRS will waive penalties under section 6722 for failure to furnish a partner a Schedule K-1 (Form 1065) and under section 6698 for failure to file a Schedule K-1 (Form 1065) with a partnership return, **under section 6038 for failure to furnish a Schedule K-1 (Form 8865), and under any other section of the Code for failure to file or furnish a Schedule K-1 or any other form or statement,** for any penalty that arises solely as a result of failing to include negative tax basis capital account information if both the following conditions are met:

1. The Schedule K-1 or other applicable form or statement is timely filed, including extensions, with the IRS; is timely furnished to the appropriate partner, if applicable; and contains all other required information.
2. The person or partnership required to file the Schedule K-1 or other applicable form or statement files with the IRS, **no later than one year after the original, unextended due date** of the form to which the

Schedule K-1 or other applicable form or statement must be attached, a schedule setting forth, for each partner for which negative tax basis capital account information is required:

- a. the partnership's name and Employee Identification Number, if any, **and Reference ID Number, if any**;
- b. the partner's name, address, and taxpayer identification number; and
- c. the amount of the partner's tax basis capital account at the beginning and end of the tax year at issue.

The schedule should be captioned "Filed Under Notice 2019-20" and accord with instructions and additional guidance posted by the IRS on IRS.gov.

The due date for this supplemental schedule is determined without consideration of any extensions, automatic or otherwise, that may apply to the due date for the form itself. The schedule should be sent to the following address:

1973 North Rulon White Blvd.

Ogden, UT 84404-7843

MS 4700

Attn: Ogden PTE

This penalty relief applies only for a taxable year beginning after December 31, 2017, but before January 1, 2019. To receive a penalty waiver, a **person** or partnership is not required to file or furnish amended Schedules K-1 **or other applicable amended forms or statements** to partners or the IRS, or to file an administrative adjustment request under section 6227, if applicable. Partnerships or **other persons** should not

delay filing or furnishing Schedules K-1 **or other applicable forms or statements** on account of this Notice. The timely filing and furnishing, including extensions, of Schedules K-1 **or other applicable forms or statements** is a requirement to be eligible for relief under this Notice. The IRS will post instructions and additional information about the relief provided by this Notice in the coming weeks on IRS.gov, where forms, instructions, and other tax assistance are available.

The penalty relief under this Notice will allow additional time for **persons** and partnerships to provide the negative tax basis capital account information with respect to their taxable years beginning after December 31, 2017, but before January 1, 2019.

CONTACT INFORMATION

The principal author of this Notice is Isaac Brooks Fishman of the Office of the Associate Chief Counsel (Procedure and Administration). For further information regarding this Notice contact Isaac Brooks Fishman at (202) 317-6844 (not a toll-free call).