

[4830-01-u]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 8843]

RIN 1545-AW14

Partnership Returns Required on Magnetic Media

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the requirements for filing partnership returns on magnetic media. These regulations reflect changes to the law made by the Taxpayer Relief Act of 1997. These regulations affect partnerships with more than 100 partners.

DATES: Effective Date: These regulations are effective January 1, 2000.

Applicability Date: These regulations apply to partnership returns for taxable years ending on or after December 31, 2000. However, the regulations will not apply to electing large partnership returns under section 775 or partnership returns with foreign addresses for taxable years ending before January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Bridget E. Finkenaur, (202) 622-4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Regulations on Procedure and Administration (26 CFR part 301) relating to filing partnership returns on magnetic media under section 6011(e)(2). In addition, this document contains conforming amendments to the Regulations on Procedure and Administration (26 CFR part 301) relating to information reporting penalties under section 6721.

A notice of proposed rulemaking (REG-102023-98) was published in the **Federal Register** (63 FR 56878) on October 23, 1998. The public hearing scheduled for January 13, 1999, was canceled in the **Federal Register** (64 FR 1148) on January 8, 1998. No public hearing was requested or held. Two written comments were received. After consideration of the comments, the proposed regulations are adopted as modified by this Treasury decision. The comments are discussed below.

Explanation of Revisions and Summary of Comments

Both commentators requested that the IRS and the Treasury Department postpone the effective date of the regulations. The commentators were concerned that, given the various manners and formats that nominees use to submit partner information to publicly traded partnerships, these partnerships would be unable to create computer programs that would reformat the partner information in time to file their 1999 tax returns on magnetic media. In addition, partnerships required to file their returns on magnetic media beginning in 2000 will be focusing their computer resources on ensuring that their computer systems are year 2000 compliant. The commentators suggested that the

effective date of the regulations be postponed to take into account these programming considerations.

In considering these comments, the IRS and the Treasury Department have decided to postpone the general effective date of the regulations for one year. This will allow partnerships additional time to develop systems that accommodate IRS processing requirements and integrate third party information while not interfering with efforts to ensure year 2000 compliance. Therefore, the final regulations are generally effective for taxable years ending on or after December 31, 2000. However, the effective date for electing large partnerships and partnerships using foreign addresses on their Series 1065 forms remains the same as the proposed regulations. Accordingly, electing large partnerships and partnerships using foreign addresses will not be required to file their returns on magnetic media for taxable years ending before January 1, 2001.

Although the general effective date of the regulations has been postponed, on March 15, 2000, the IRS will begin accepting partnership returns for taxable years ending on or after December 31, 1999, on magnetic media. The magnetic media filing of partnership returns for taxable years ending before December 31, 2000, is voluntary; partnerships will not be penalized for submitting a partnership return on paper for taxable years ending before this date. However, partnerships with the capability of submitting their partnership tax returns on magnetic media are encouraged to do so.

Partnerships with 100 or fewer partners also may voluntarily submit partnership returns on magnetic media beginning on March 15, 2000. These regulations do not require partnerships with 100 or fewer partners to file their returns on magnetic media; therefore, such partnerships will not be penalized for their failure to do so. In addition, partnerships with 100 or fewer partners participating in the magnetic media filing program may discontinue their participation at any time.

One commentator suggested that the IRS and the Treasury Department publish regulations under section 6031(c) to require nominees holding partnership interests to submit partner information to partnerships in the same manner and format that the IRS requires partnerships to file their returns under §301.6011-3 of the regulations. However, by postponing the effective date, it is anticipated that partnerships and nominees will have adequate time to establish satisfactory guidelines for sharing information. Accordingly, this comment has not been adopted by the final regulations.

Finally, one commentator asked whether fiscal year and short year returns will be required to be filed on magnetic media by the general effective date. Again, because the IRS and the Treasury Department have postponed the general effective date for one year, it is anticipated that partnerships will be able to meet the systems requirements set forth in IRS revenue procedures and other published guidance by the effective date. However, due to issues relating to creation of the system for accepting

returns on magnetic media, the IRS will not be able to accept fiscal and short year returns prior to the general effective date. Therefore, partnerships that use a fiscal year and partnerships that must file a short year return may not voluntarily file their returns on magnetic media before January 1, 2001.

As indicated in the preamble to the proposed regulations, although the regulations define magnetic media broadly, the Service currently plans, in prescribed procedures for participation in the mandatory magnetic media filing program, to require partnerships with more than 100 partners to file their partnership returns electronically.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking that preceded these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Bridget E. Finkenaur, Office of the Assistant Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in the development of these regulations.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301--PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 301.6011-3 also issued under 26 U.S.C. 6011; * * *

Par. 2. Section 301.6011-3 is added to read as follows:

§301.6011-3 Required use of magnetic media for partnership returns.

(a) Partnership returns required on magnetic media. If a partnership with more than 100 partners is required to file a partnership return pursuant to §1.6031(a)-1 of this chapter, the information required by the applicable forms and schedules must be filed on magnetic media, except as otherwise provided in paragraph (b) of this section. Returns filed on magnetic media must be made in accordance with applicable revenue procedures or

publications. In prescribing revenue procedures or publications, the Commissioner may determine that partnerships will be required to use any one form of magnetic media filing. For example, the Commissioner may determine that partnerships with more than 100 partners must file their partnership returns electronically. In filing its return, a partnership must register to participate in the magnetic media filing program in the manner prescribed by the Internal Revenue Service in applicable revenue procedures or publications.

(b) Waiver. The Commissioner may waive the requirements of this section if hardship is shown in a request for waiver filed in accordance with this paragraph (b). A determination of hardship will be based upon all of the facts and circumstances. One factor in determining hardship will be the reasonableness of the incremental cost to the partnership of complying with the magnetic media filing requirements. Other factors, such as equipment breakdowns or destruction of magnetic media filing equipment, also may be considered. A request for waiver must be made in accordance with applicable revenue procedures or publications. The waiver will specify the type of partnership return and the period to which it applies. The waiver will also be subject to such terms and conditions regarding the method of filing as may be prescribed by the Commissioner.

(c) Failure to file. If a partnership fails to file a partnership return on magnetic media in the manner required and when required to do so by this section, the partnership will be

deemed to have failed to file the return in the manner prescribed for purposes of the information return penalty under section 6721. See §301.6724-1(c)(3) for rules regarding the waiver of penalties for undue economic hardship relating to filing returns on magnetic media.

(d) Meaning of terms. The following definitions apply for purposes of this section:

(1) Magnetic media. The term magnetic media means any magnetic media permitted under applicable regulations, revenue procedures, or publications. These generally include magnetic tape, tape cartridge, and diskette, as well as other media (such as electronic filing) specifically permitted under the applicable regulations, procedures, or publications.

(2) Partnership. The term partnership means a partnership as defined in §1.761-1(a) of this chapter.

(3) Partner. The term partner means a member of a partnership as defined in section 7701(a)(2).

(4) Partnership return. The term partnership return means a form in Series 1065 (including Form 1065, U.S. Partnership Return of Income, and Form 1065-B, U.S. Return of Income for Electing Large Partnerships), along with the corresponding Schedules K-1 and all other related forms and schedules that are required to be attached to the Series 1065 form.

(5) Partnerships with more than 100 partners. A partnership has more than 100 partners if, over the course of the partnership's taxable year, the partnership had more than 100

partners, regardless of whether a partner was a partner for the entire year or whether the partnership had over 100 partners on any particular day in the year. For purposes of this paragraph (d)(5), however, only those persons having a direct interest in the partnership must be considered partners for purposes of determining the number of partners during the partnership's taxable year.

(e) Examples. The following examples illustrate the provisions of paragraph (d)(5) of this section. In the examples, the partnerships utilize the calendar year, and the taxable year in question is 2000:

Example 1. Partnership P had five general partners and 90 limited partners on January 1, 2000. On March 15, 2000, 10 more limited partners acquired an interest in P. On September 29, 2000, the 10 newest partners sold their individual partnership interests to C, a corporation which was one of the original 90 limited partners. On December 31, 2000, P had the same five general partners and 90 limited partners it had on January 1, 2000. P had a total of 105 partners over the course of partnership taxable year 2000. Therefore, P must file its 2000 partnership return on magnetic media.

Example 2. Partnership Q is a general partnership that had 95 partners on January 1, 2000. On March 15, 2000, 10 partners sold their individual partnership interests to corporation D, which was not previously a partner in Q. On September 29, 2000, corporation D sold one-half of its partnership interest in equal shares to five individuals, who were not previously partners in Q. On December 31, 2000, Q had a total of 91 partners, and on no date in the year did Q have more than 100 partners. Over the course of the year, however, Q had 101 partners. Therefore, Q must file its 2000 partnership return on magnetic media.

Example 3. Partnership G is a general partnership with 100 partners on January 1, 2000. There are no new partners added to G in 2000. One of G's partners, A, is a partnership with 53 partners. A is one partner, regardless of the number of partners A has. Therefore, G has 100 partners and is not required to file its 2000 partnership return on magnetic media.

(f) Effective date. In general, this section applies to partnership returns for taxable years ending on or after December 31, 2000. However, electing large partnerships under section 775 and partnerships using foreign addresses on their Series 1065 forms are not required to file using magnetic media for taxable years ending before January 1, 2001.

Par. 3. Section 301.6721-1 is amended by removing the third, fourth, and fifth sentences of paragraph (a)(2)(ii) and adding four sentences in their place to read as follows:

§301.6721-1 Failure to file correct information returns.

(a) * * *

(2) * * *

(ii) * * * However, no penalty is imposed under paragraph (a)(1) of this section solely by reason of any failure to comply with the requirements of section 6011(e)(2), except to the extent that such a failure occurs with respect to more than 250 information returns (the 250-threshold requirement) or in the case of a partnership with more than 100 partners, more than 100 information returns (the 100-threshold requirement) (collectively, the threshold requirements). Each Schedule K-1 considered in applying the 100-threshold requirement will be treated as a separate information return. These threshold requirements apply separately to each type of information return

required to be filed. Further, these threshold requirements
apply separately to original and corrected returns. * * *

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Robert E. Wenzel
Deputy Commissioner of Internal Revenue

Approved: October 29, 1999

Joseph Mikrut
Assistant Secretary of the Treasury