

PARTNERSHIPS CAN AMEND 2018 AND 2019 TAX RETURNS FOR COVID-19 RELIEF

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Revenue Procedure 2020-23¹ allows partnerships subject to the centralized audit regime to file amended tax returns to take advantage of retroactive tax relief provisions in the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”).²

The CARES Act was enacted to provide an immediate economic benefit to taxpayers during the COVID-19 emergency.³ The CARES Act includes retroactive tax-related provisions, including allowing: qualified improvement property to qualify for 100% bonus depreciation; net operating losses that arose in a tax year that began in 2018, 2019, or 2020 to be carried back five years; and increased interest expense deductions.⁴ These changes may benefit partnerships and their partners, but the benefits would be delayed by the centralized audit regime enacted in the Bipartisan Budget Act of 2015 (the “BBA”).⁵

Under the BBA, partnerships are generally prohibited from filing amended partnership returns and providing amended Schedule K-1s to their partners.⁶ Instead, BBA partnerships must file an Administrative Adjustment Request (AAR), and any reduction in tax liability for a prior tax year can only be taken as a credit against taxes owed in the current tax year (*i.e.*, 2020).⁷ Thus, under the AAR process, any benefit that partners would receive from the retroactive CARES Act provisions would be deferred until sometime in 2021 when such partners can take the nonrefundable credit against their 2020 taxes.

Revenue Procedure 2020-23 ensures that partnerships (and their partners) can obtain the immediate economic relief that was intended by the CARES Act. The IRS recognized that the AAR “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.”⁸ Thus, Revenue

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¹ Rev. Proc. 2020-23, 2020-18 IRB 749 (April 27, 2020).

² The Coronavirus Aid, Relief, and Economic Security Act, Public Law No. 116-136, 134 Stat. 281 (March 27, 2020) (“CARES Act”).

³ Rev. Proc. 2020-23, § 2.04.

⁴ CARES Act, §§ 2303, 2306, 2307.

⁵ Bipartisan Budget Act of 2015, Public Law No. 114-74, 129 Stat. 584, § 1101 (Nov. 2, 2015); I.R.C. §§ 6221-6241.

⁶ See I.R.C. § 6031(b), 6222(a).

⁷ See I.R.C. § 6227.

⁸ Rev. Proc. 2020-23, § 2.04.

Procedure 2020-23 permits eligible partnerships to file amended tax returns for 2018 and 2019 in lieu of filing an AAR and allows their partners to file an amended return (or their 2019 original return if they have not yet filed) requesting a tax refund.⁹

Under the Revenue Procedure, a partnership may file an amended return for tax years beginning in 2018 and 2019 if the partnership filed a Form 1065, Return of Partnership Income, and issued Schedule K-1s to its partners for such years prior to the issuance of Revenue Procedure 2020-23.¹⁰ Partnerships wishing to file amended returns should file a Form 1065 with the “Amended Return” box checked and issue amended Schedule K-1s to each partner before September 30, 2020.¹¹ Partnerships must clearly indicate the application of the Revenue Procedure by including the notation “FILED PURSUANT TO REV PROC 2020-23” at the top of the amended return and on an attachment to each partner’s Schedule K-1.¹² In addition to the changes resulting from the CARES Act, such amended returns may include any other amendments permitted by the tax law.¹³ The Revenue Procedure also suggests partnerships file electronically “for faster processing of the amended return.”¹⁴

⁹ *Id.* at §§ 2.05, 3.

¹⁰ *Id.* at §§ 3.02-03.

¹¹ *Id.* at §§ 3.02, 4.01.

¹² *Id.* at § 4.01.

¹³ *Id.* at § 3.02.

¹⁴ *Id.* at § 4.01.