

## Notice of Proposed Rulemaking and Notice of Public Hearing

### Partnership Returns Required on Magnetic Media

REG-102023-98

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the requirements for filing partnership returns on magnetic media under section 6011(e) of the Internal Revenue Code. The proposed regulations reflect changes to the law made by the Taxpayer Relief Act of 1997. The proposed regulations affect partnerships with more than 100 partners. This document also provides a notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by January 21, 1999. Requests to speak (with outlines of oral comments) at the public hearing scheduled for January 13, 1999, must be received by December 23, 1998.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG-102023-98), Room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG-102023-98), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC.

Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at [http://www.irs.ustreas.gov/prod/tax\\_regs/comments.html](http://www.irs.ustreas.gov/prod/tax_regs/comments.html). The public hearing will be held in Room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Bridget E. Finkenaur, 202-622-4940; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Mike Slaughter, 202-622-7190 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### *Background*

This document contains proposed amendments to the Regulations on Procedure and Administration (26 CFR part 301) relating to the filing of partnership returns on magnetic media under section 6011(e)(2) of the Internal Revenue Code. Section 6011(e)(2) was amended by section 1224 of the Taxpayer Relief Act of 1997, Public Law 105-34 (111 Stat. 788 (1997)) (the Act), effective for taxable years ending on or after December 31, 1997. Section 6012(e) of the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105-206 (112 Stat. 685 (1998)), changes the effective date of section 1224 of the Act to taxable years beginning after December 31, 1997.

Section 6011(e) authorizes the Secretary to prescribe regulations providing the standards for determining which returns must be filed on magnetic media or in other machine-readable form. Section 6011(e)(2)(A) provides that the regulations may not require any person to file returns on magnetic media unless the person is required to file at least 250 returns during the calendar year. However, the last sentence of section 6011(e)(2), which was added by section 1224 of the Act, provides that the Secretary must prescribe regulations requiring partnerships with more than 100 partners to file returns on magnetic media. In addition, section 6011(e)(2)(B) requires that the regulations take into account (among other relevant factors) the ability of the taxpayer to comply at reasonable cost with the requirements of the regulations.

Currently, the IRS permits certain partnerships to file their partnership returns on magnetic media (including magnetic tape, floppy disk, and electronic filing) with the

Internal Revenue Service Center in Andover, Massachusetts. Under this voluntary program, participants have the option of: (1) submitting the entire partnership tax return (including Form 1065, U.S. Partnership Return of Income, Schedules K-1, Partner's Share of Income, Credits, Deductions, etc., and all other related forms and schedules) on magnetic media, or (2) submitting only the Schedules K-1 on magnetic media and filing the rest of the partnership return on paper.

In Notice 97-77 (1997-52 I.R.B. 18 (December 29, 1997)), the IRS notified taxpayers that the Act's amendment to section 6011(e)(2) is not self-executing. Rather, the IRS must first issue regulations that would require partnerships with more than 100 partners to file their partnership returns on magnetic media. Accordingly, partnerships were not required to file their 1997 partnership returns on magnetic media.

##### *Explanation of Provisions*

###### *In General*

The proposed regulations provide that partnerships with more than 100 partners must file their partnership returns on magnetic media. The determination of whether a partnership has more than 100 partners is made by counting the number of partners the partnership had over the partnership's taxable year, 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.

The proposed regulations provide that a partnership return is 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.

Magnetic media means any magnetic media permitted under applicable regulations, revenue procedures, or publications. The IRS will prescribe procedures for participation in the mandatory magnetic media filing program for partnerships with more than 100 partners. In-

cluded in those procedures will be methods for registering for the program and signing the partnership return. The procedures will be contained in applicable revenue procedures or publications.

The term magnetic media generally includes magnetic tape, tape cartridge, and diskette, as well as other media (such as electronic filing). Consistent with the definition of magnetic media in other regulations, the proposed regulations define magnetic media broadly. However, under these regulations, the Service plans to require partnerships with more than 100 partners to file their partnership returns electronically. These requirements for electronic filing will be detailed in applicable revenue procedures or publications.

The IRS and Treasury Department believe that requiring affected partnerships to file electronically will enhance the quality of IRS's customer service and will reduce the costs associated with maintaining the ability to accept forms in a variety of magnetic media. Furthermore, the IRS and Treasury Department believe that electronic filing has less burden on taxpayers than filing using other forms of magnetic media.

Electronic filing reduces the normal processing time associated with paper returns in that there is minimal hands-on processing and, therefore, there are no paperwork delays. Faster processing means faster settling of accounts and better customer service. Electronic filing also reduces errors and increases security by reducing duplicate or erroneous returns. In addition, taxpayers receive prompt acknowledgment that their returns have been received and accepted by the Internal Revenue Service. Finally, electronic filing reduces the operating costs for taxpayers whose data already resides on a computer system. Overall, electronic filing of partnership returns should increase customer satisfaction and confidence in the filing process, and be more cost effective for partnerships.

Although the IRS Service Center in Andover, Massachusetts currently accepts returns in the voluntary program on various forms of magnetic media, the systems at this facility are not year 2000 compliant and will not be in operation after 1999. Accordingly, in designing its new magnetic media systems to accept electroni-

cally filed returns only, the IRS anticipates that it will no longer be able to accept returns filed in the form currently used by some partnerships in the voluntary program.

#### *Hardship Waiver*

The proposed regulations provide procedures for granting waivers of the magnetic media filing requirements for one or more years in cases of hardship. A determination of hardship will be based upon all of the facts and circumstances. Some factors that will be considered in granting waivers include the reasonableness of the incremental cost to the partnership of complying with the magnetic media filing requirements as well as temporary equipment breakdowns and destruction of magnetic media filing equipment.

#### *Penalties*

The proposed regulations provide that if a partnership has more than 100 partners and is required to file a partnership return, but fails to file its Series 1065 form, accompanying Schedules K-1, and all other related forms and schedules in the manner required, the partnership is deemed to have failed to file correct information returns for purposes of the information reporting penalty under section 6721. Penalties for failure to file correct information returns would apply for each Schedule K-1 that is not filed using permissible magnetic media.

#### *Proposed Effective Dates*

The IRS is currently focusing a significant portion of its resources on the Year 2000 date change. In addition, the IRS is developing new programs to accommodate the new Form 1065-B and partnership returns filed with a foreign address on the Series 1065 form. Further, partnerships will have to update their processes and technology to implement the electronic filing requirements.

Taking these factors into consideration, the proposed regulations would delay the effective date for filing partnership returns on magnetic media, and phase in the magnetic media filing of certain partnership returns. Thus, the proposed regulations would be generally effective for partnership returns for partnership taxable

years ending on or after December 31, 1999. However, electing large partnerships under section 775 and partnerships using foreign addresses on their Series 1065 forms would not be required to file their partnership returns using magnetic media for taxable years ending before January 1, 2001.

#### *Special Analyses*

It is hereby certified that the regulations in this document will not have a significant economic impact on a substantial number of small entities. This certification is based on a determination that these regulations will impose no additional reporting or recordkeeping requirement and will prescribe only the method for filing partnership returns that are already required to be filed under section 6031. Accordingly, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required.

Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

#### *Comments and Public Hearing*

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Wednesday, January 13, 1999, at 10 a.m. in Room 2615 of the Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name

placed on the building access list to attend the hearing, see the “FOR FURTHER INFORMATION CONTACT” section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit comments and an outline of the topics to be discussed and the time to be devoted to each topic by December 23, 1998.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

#### *Drafting Information*

The principal author of these proposed 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 proposed regulations.

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#### *Proposed Amendments to the Regulations*

Accordingly, 26 CFR parts 1 and 301 are proposed to be amended as follows:

#### PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read as follows:

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

Par. 2 Section 1.6031(a) as proposed to be added at 63 F.R. 3679 is amended by adding paragraph (e)(i)(iv) read as follows:

#### *§1.6031(a)–1 Return of partnership income.*

\* \* \* \* \*

(e) \* \* \*

(1) \* \* \*

(iv) *Returns filed on magnetic media.* Notwithstanding the provisions of paragraphs (e)(1)(i) and (ii) of this section, the return of a partnership that is required to be filed on magnetic media under §301.6011–3 of this chapter must be filed at the Service Center indicated in relevant Internal Revenue Service revenue proce-

dures, publications, forms, or instructions.

\* \* \* \* \*

#### PART 301—PROCEDURE AND ADMINISTRATION

Par. 4. The authority citation for part 301 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 \* \* \*  
Section 301.6011–3 also issued under 26 U.S.C. 6011; \* \* \*

Par. 5. 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 applica-

ble 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 §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 §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 1999:

*Example 1.* Partnership P had five general partners and 90 limited partners on January 1, 1999. On March 15, 1999, 10 more limited partners acquired an interest in P. On September 30, 1999, 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, 1999, P had the same five general partners and 90 limited partners it had on January 1, 1999. P had a total of 105 partners over the course of partnership taxable year 1999. Therefore, P must file its 1999 partnership return on magnetic media.

*Example 2.* Partnership Q is a general partnership that had 95 partners on January 1, 1999. On March 15, 1999, 10 partners sold their individual partnership interests to corporation D, which was not previously a partner in Q. On September 30, 1999, 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, 1999, 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 1999 partnership return on magnetic media.

*Example 3.* Partnership G is a general partnership with 100 partners on January 1, 1999. There are no new partners added to G in 1999. 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 1999 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, 1999. However, electing large partnerships under §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. 6. Section 301.6031-1 is revised to read as follows:

*§301.6031-1 Return of partnership income.*

For provisions relating to the requirement of returns of partnership income, see §1.6031(a)-1 of this chapter. For provisions relating to magnetic media filing of partnership returns, see §301.6011-3.

Par. 7. 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 §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. \* \* \*

\* \* \* \* \*

Michael P. Dolan,  
Deputy Commissioner of  
Internal Revenue.

(Filed by the Office of the Federal Register on October 22, 1998, 8:45 a.m., and published in the issue of the Federal Register for October 23, 1998, 63 F.R. 56878)