Aug. 10, 2017

Via Electronic Mail
The Honorable John A. Koskinen
Commissioner
Internal Revenue Service
CC: PA:LPD:PR (REG–136118-15)
P.O. Box 7604, Ben Franklin Station
Washington, DC 20044

RE: REG-136118-15 (RIN 1545-BN77) Regarding Centralized Partnership Audit Regime

Dear Commissioner Koskinen,

The Pennsylvania Institute of Certified Public Accountants (PICPA), respectfully submits the following comments on the proposed regulations to amend the Procedure and Administration Regulations (26 CFR part 301) under Subpart—Tax Treatment of Partnership Items to implement the centralized partnership audit regime enacted by Section 1101 of the Bipartisan Budget Act of 2015 (BBA), Public Law 114–74.

Founded in 1897, the Pennsylvania Institute of Certified Public Accountants (PICPA) is a nonprofit, voluntary professional organization representing more than 22,000 members. Expressed goals of the PICPA are to speak on behalf of CPAs in Pennsylvania, as well as on behalf of the public interest. Thank you for the opportunity to review and comment.

**Background**

The essential element of the proposed partnership regulation is, “the proposed regulations take an expansive view of the scope of the centralized partnership audit regime to cover all items and information related to or derived from the partnership”. Accordingly, under proposed § 301.6221(a)–1, “all items required to be shown or reflected on the partnership’s return and information in the partnership’s books and records related to a determination of such items, as well as factors that affect the determination of items of income, gain, loss, deduction, or credit, are subject to determination and adjustment at the partnership level under the centralized partnership audit regime.”

We agree with the proposed regulations and believe that determining all items related to, and derived from, the partnership, at the partnership level, can only enhance accuracy and improve the Internal Revenue Service’s (IRS) ability to effectively and efficiently audit the ever-increasing size and sophistication of partnerships.

The commentary provided is concerned with certain procedural questions, and not with the overall concept of the centralized partnership audit regime.
Comment Section

1. Section 6222(c)(1)(A)(i) provides for the filing of a statement with the IRS Secretary when a partner treats an item differently, or inconsistently, with how the same item was treated by the partnership.

What specifically is the form and/or method for providing the IRS with the statement identifying an inconsistent tax treatment? Can the statement only be filed contemporaneously with the tax return? Should specific format guidance be suggested to assist the public in reporting such matters?

2. Section 6223(a) allows for the designation of the “partnership representative” by the Secretary of the IRS when the partnership has not chosen a designee. Furthermore, when the IRS chooses a designee, this designee may not be revoked without the consent of the IRS. We disagree with this option.

The PICPA understands and recognizes the past authoritative limitations of the Tax Matters Person, or TMP. The TMP, as the predecessor to the partnership representative, had no authority to bind the partnership, and the lack of exclusive oversight in IRS-related matters created an undue burden on the IRS and made audits far less efficient.

We do not advocate a return to the TMP or unnecessary and burdensome ambiguity in the procedural conduct of an audit. We recognize that a significant “delay” tactic was often employed to slow audit progress by allowing additional partners to overrule the TMP or contradict the decisions made.

However, these facts do not justify the IRS securing the authority for a third-party to ever act unilaterally on behalf of an entity under audit. This, in one theoretical sense, is like forcing the accused to be represented by the prosecution or the prosecutions agent. Forcing partnerships to designate a partnership representative makes more sense. Selecting the partnership representative is draconian. Sanctioning a noncomplying partnership through a harsh penalty regime is a better course.

Furthermore, while the centralized partnership regime does not presently include a statutory right to notice, we believe that given the tremendous authority the partnership representative wields, statutory notice is a reasonable accommodation for those potentially affected partners.

It may sometimes appear that tax code notice provisions can unilaterally benefit the IRS but such notice provisions are not necessarily made available to taxpayers to the same degree. Notice is often required when it benefits IRS but is not required when it could benefit a taxpayer.

We believe that the consideration of notice, as a core tax code principle, should be provided for and applied in the tax code, impartially, and to the widest extent practicable. This would apply to any and all parties affected by this, or any other regulation, and would help guarantee tax payer rights and to enhance tax payer perception of the tax code’s inherent fairness.

3. It is unclear why a revocation under 301.6221(b)-1(c)(1), an “election-out” of the centralized audit partnership regime, requires consent of the IRS? Would not the IRS want the centralized audit regime to be applicable to as many partnerships as possible? Those requesting revocation should be able to more easily complete such a change and demonstrate suitability with the current tax filing.

Avoiding revocation consent may allow for partnerships to “opt-in” more easily.

Additionally, the provisions for “electing-out” of the centralized audit partnership regime requires, under 301.6221(b)-1(c)(2), that a partnership must “disclose to IRS the names, correct TINs, ... of all partners
of a partnership.” We agree with the IRS where it states that “…in most cases, partners in partnerships that file form 1065 are required to have TINs and as a result alternative methods for identification may be unnecessary.

However, while requesting comments for “describing situations in which a foreign partner in a partnership entity subject to the centralized audit regime” that may not “otherwise be required to have a TIN,” as well as asking for “alternative identification procedures to be used in such cases,” sends taxpayers a mixed message. We believe the IRS should be less ambiguous.

If a foreign partner is subject to the centralized audit regime, that partner must have a TIN. No exceptions. The IRS emphasis on international tax evasion mandates a policy of all foreign partners having a TIN. If the foreign partner has no TIN, then possible sanction -- such as loss of creditable foreign tax expenditures (CFTEs) or other penalty -- may be assessed.

4. As stated in 6221(b)(1)(D)(i), the IRS intends to carefully scrutinize whether two or more partnerships that have elected out should be recast under existing judicial doctrines and general federal tax principles as having formed one or more constructive or de facto partnerships for federal income tax purposes. This recast entity will “be subject to the centralized partnership audit regime because that constructive or de facto partnership will not have filed a partnership return and, therefore, will not have made a timely election out as required under section 6221(b)(1)(D)(i) and these proposed regulations.”

The newly recast entity should have an appeal right on the determination that recast the entity. The inherently subjective elements (as well as objective) elements of such a decision necessitates a third-party appeal provision. This can ensure a perception of fairness and accuracy. The United States Tax Court would seem a like the best appeal venue.

5. Proposed regulation 301.6241-3(b)(2) states that “the IRS is not required to make a determination that a partnership ceases to exist even if the definition in 301.6241-3(b)(2) applies to the partnership.” Further proposed regulation states that “the IRS may, at its discretion, determine that a partnership ceases to exist - 301.6241–3(b)(1).”

The language of the aforementioned proposed regulations is ambiguous, and allows for excessive latitude and a potential for abuse of discretion in making such a determination. Considering that the facts may be readily apparent, that a partnership has ceased to exist; we believe the IRS, upon formal request, should be compelled to consider the facts and circumstance of a ceased to exist determination.

We appreciate this opportunity to present our comments. If you would like to discuss further, please do not hesitate to contact the PICPA’s Government Affairs office at (717) 232-1821.

Sincerely,

Sean Brennan, CPA, MBA
Chair, Federal Taxation Committee

Michael D. Colgan, CAE
CEO & Executive Director