

Part III - Administrative, Procedural, and Miscellaneous

Relief for Partnerships and REMICs Filing Returns or Extension Requests by the Due Date in Effect Before the Enactment of the Surface Transportation Act

Notice 2017-47

PURPOSE

This notice provides penalty relief to partnerships and real estate mortgage investment conduits (REMICs) that filed certain untimely returns or untimely requests for extension of time to file those returns for the first taxable year that began after December 31, 2015, by the fifteenth day of the fourth month following the close of that taxable year.

BACKGROUND

Section 2006 of the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 (the Surface Transportation Act), Public Law 114–41, 129 Stat. 443 (2015), amended section 6072 of the Internal Revenue Code (the Code) and changed the date by which a partnership must file its annual return. The due date for filing the annual return of a partnership changed from the fifteenth day of the fourth month following the close of the taxable year (April 15 for calendar-year

taxpayers) to the fifteenth day of the third month following the close of the taxable year (March 15 for calendar-year taxpayers). The new due date applies to the returns of partnerships for taxable years beginning after December 31, 2015.

Partnerships filing Form 1065, "U.S. Return of Partnership Income," and Form 1065-B, "U.S. Return of Income for Electing Large Partnerships," are affected by the Surface Transportation Act amendment. These partnerships may also file Form 8804, "Annual Return for Partnership Withholding Tax (Section 1446)," and Form 8805, "Foreign Partner's Information Statement of Section 1446 Withholding Tax," which are generally due to the IRS on the same date as the partnership's Form 1065 or Form 1065-B. Filers of Form 1065 must furnish their partners with Schedules K-1, "Partner's Share of Income, Deductions, Credits, etc.," by the due date of the Form 1065, and filers of Form 1065-B must furnish their partners with Schedules K-1 by the first March 15 following the close of the partnership's taxable year. Filers of Form 8804 that are required to file Forms 8805 must also furnish their partners with their respective copies of Forms 8805 by the due date of the Form 8804. Some partnerships must also file additional returns, such as Form 5471, "Information Return of U.S. Persons With Respect to Certain Foreign Corporations," by the due date of the Form 1065 or Form 1065-B.

Partnerships can obtain a six-month extension of time to file Form 1065, 1065-B, or 8804 by filing Form 7004, "Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns," by the statutory due date of those returns. Partnerships that receive an extension of time to file Form 1065 receive a concurrent extension of time to furnish their partners with Schedules K-1. Also,

partnerships that receive an extension of time to file Form 8804 receive concurrent extensions of time to file Forms 8805 and to furnish respective copies of the Forms 8805 to their partners. The six-month extension may apply to additional returns that partnerships may be required to file by the due date of their Forms 1065 or 1065-B, but it does not affect the due date for partnerships filing Form 1065-B to furnish their partners with Schedules K-1.

Partnerships that fail to timely meet their obligations to file and furnish returns are subject to penalties. Partnerships that fail to file Form 1065, 1065-B, or 8804 by the due date (with regard to extensions) are subject to penalty under section 6698 or 6651 of the Code. Partnerships that fail to file Forms 8805 by the due date (with regard to extensions) are subject to penalty under 6721 of the Code. Partnerships that fail to furnish Schedules K-1 or the partner copies of Forms 8805 by the due date are subject to penalty under section 6722 of the Code. Partnerships that fail to file Form 5471 by the due date are subject to penalty under section 6038 or 6679 of the Code. Partnerships that fail to file additional returns that they are required to file by the due date of their Forms 1065 or 1065-B may also be subject to other penalties.

Many partnerships filed the returns discussed above or Form 7004 for the first taxable year beginning after December 31, 2015, by the date previously required by section 6072. If not for the Surface Transportation Act, these returns and requests for extension of time to file would have been timely.

DISCUSSION

The IRS will grant relief from the penalties described above for any return described above for the first taxable year of any partnership that began after December 31, 2015, if the following conditions are satisfied:

(1) the partnership filed the Form 1065, 1065-B, 8804, 8805, 5471, or other return required to be filed with the IRS and furnished copies (or Schedules K-1) to the partners (as appropriate) by the date that would have been timely under section 6072 before amendment by the Surface Transportation Act (April 18, 2017 for calendar-year taxpayers, because April 15 was a Saturday and April 17 was a legal holiday in the District of Columbia), or

(2) the partnership filed Form 7004 to request an extension of time to file by the date that would have been timely under section 6072 before amendment by the Surface Transportation Act and files the return with the IRS and furnishes copies (or Schedules K-1) to the partners (as appropriate) by the fifteenth day of the ninth month after the close of the partnership's taxable year (September 15, 2017, for calendar-year taxpayers). If the partnership files Form 1065-B and was required to furnish Schedules K-1 to the partners by March 15, 2017, it must have done so to qualify for relief.

This relief will be granted automatically for penalties for failure to timely file Forms 1065, 1065-B, 8804, 8805, and any other returns, such as Form 5471, for which the due date is tied to the due date of Form 1065 or Form 1065-B. Relief will also be granted to REMICs, which file Form 1066, "U.S. Real Estate Mortgage Investment Conduit (REMIC) Income Tax Return." Partnerships and REMICs that qualify for relief and have already been assessed penalties can expect to receive a letter within the next several

months notifying them that the penalties have been abated. For reconsideration of a penalty covered by this notice that has not been abated by February 28, 2018, contact the number listed in the letter that notified you of the penalty or call (800) 829-0115 and state that you are entitled to relief under Notice 2017-47. Taxpayers who qualify for relief under this notice will not be treated as having received a first-time abatement under the IRS's administrative penalty waiver program.

DRAFTING INFORMATION

The principal author of this notice is Jonathan R. Black of the Office of the Associate Chief Counsel (Procedure and Administration). For further information regarding this notice contact Jonathan R. Black at (202) 317-6845 (not a toll-free number).