

NOT-128773-19

Reporting of Positive Tax Basis Capital Accounts not Required Until 2020 Partnership Taxable Years; Net Unrecognized Section 704(c) Gain or Loss Defined; Publicly Traded Partnerships not Required to Report Net Unrecognized Section 704(c) Gain or Loss; Certain Reporting of Section 465 At-Risk Activities not Required Until 2020 Partnership Taxable Years; Penalty Relief

Notice 2019-66

## BACKGROUND

This notice provides that the requirement to report partners' shares of partnership capital on the tax basis method will not be effective for 2019 (for partnership taxable years beginning in calendar 2019) but will be effective beginning in 2020 (for partnership taxable years that begin on or after January 1, 2020). For 2019, partnerships and other persons must report partner capital accounts consistent with the reporting requirements in the 2018 forms and instructions, including the requirement to report negative tax basis capital accounts on a partner-by-partner basis. This notice also clarifies the 2019 requirement for partnerships and other persons to report a partner's share of "net unrecognized Section 704(c) gain or loss" by defining this term for purposes of the reporting requirement. Additionally, this notice exempts publicly traded partnerships from the requirement to report their partners' shares of net unrecognized Section 704(c) gain or loss until further notice. This notice also provides that the requirement added by the draft instructions for 2019 for partnerships to report to partners information about separate "Section 465 at-risk activities" will not be effective until 2020. Finally, this notice provides relief from certain reporting penalties imposed by the Internal Revenue Code (Code).

## REPORTING PARTNER TAX BASIS CAPITAL ACCOUNTS

A draft of the 2019 Form 1065, Schedule K-1, Item L, and a draft of the 2019 Form 8865, Schedule K-1, Item F, both released September 30, 2019, and related draft instructions for the 2019 Form 1065, U.S. Return of Partnership Income (to which the draft instructions for the 2019 Form 8865, Return of U.S. Persons With Respect to Certain Foreign Partnerships, refer), and the 2019 Form 1065, Schedule K-1, both released October 29, 2019, proposed to require partner tax basis capital reporting by all partnerships and certain other persons and to prohibit the reporting of partner capital under section 704(b) of the Code (Section 704(b)), generally accepted accounting principles (GAAP), or any other method for 2019.

Based on comments received, the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) have become aware that certain persons required to file Forms 1065 or 8865 may be unable to timely comply with the requirement to report partner capital on the tax basis method for 2019. This notice provides that partnerships and other persons required to furnish and file Form 1065, Schedule K-1 or Form 8865, Schedule K-1, will not be required to report partner capital accounts in Item L of the 2019 Form 1065, Schedule K-1, or in Item F of the 2019 Form 8865, Schedule K-1, using the tax basis method for 2019.

Instead, partnerships and other persons must report partner capital accounts for 2019 consistent with the reporting requirements for the 2018 Forms 1065, Schedule K-1, or 8865, Schedule K-1, as applicable. This means that partnerships and other persons may continue to report partner capital accounts on Forms 1065, Schedule K-1, Item L, or 8865, Schedule K-1, Item F, using any method available in 2018 (tax basis,

Section 704(b), GAAP, or any other method) for 2019. These partnerships and other persons must include a statement identifying the method upon which a partner's capital account is reported. The final instructions for the 2019 Forms 1065, Schedule K-1, Item L and 8865, Schedule K-1, Item F, are expected to include additional details on how such reporting should be done.

For 2019 partnership taxable years, partner "tax basis capital" must be calculated as provided in the 2018 Form 1065 and Schedule K-1 instructions. Beginning with the 2018 partnership taxable year, if a partner's tax basis capital was negative at the beginning or end of a partnership's taxable year, a partnership or other person is required to report on line 20 of a partner's Schedule K-1, using Code AH, such partner's beginning and ending tax basis capital. Partnerships and other persons who follow this notice and report partner capital accounts for 2019 in Item L of the Form 1065, Schedule K-1, or in Item F of the Form 8865, Schedule K-1, by using a method other than the tax basis method must continue to comply with the requirement in the 2018 forms and instructions with respect to negative tax basis capital accounts.

The IRS website for Form 1065 Frequently Asked Questions (FAQs), "Negative Tax Basis Capital Account Reporting Requirements," provides guidance on the calculation of a partner's tax basis capital account in FAQ 2, and, for clarity, the definition of tax basis capital includes (A)(v) and (B)(vii) of FAQ 2. Additionally, in lieu of following the definition of tax basis capital in FAQ 2, partnerships and other persons may instead use the partner outside basis safe harbor approach referenced in FAQ 6. If a partnership or other person uses the safe harbor approach, the partnership or other person must attach a statement to the partner's Schedule K-1 with the information

described in (2)(d)(iii) of FAQ 8. Other than the information described in (2)(d)(iii) of FAQ 8, the remainder of FAQ 8 is inapplicable for 2019, including the penalty relief and extension of time to file described therein, which applied only for 2018. The FAQs are found at: <https://www.irs.gov/businesses/partnerships/form-1065-frequently-asked-questions>. In preparation for filing partnership tax returns for the 2020 taxable year, further guidance will be published that provides, and requests comments on, the definition of partner tax basis capital.

#### REPORTING PARTNERS' SHARES OF NET UNRECOGNIZED SECTION 704(c) GAIN OR LOSS

A draft of the 2019 Forms 1065, Schedule K-1, Item N and 8865, Schedule K-1, Item G, released September 30, 2019, and related draft instructions for the 2019 Form 1065 (to which the draft instructions for the 2019 Form 8865 refer), and the 2019 Form 1065, Schedule K-1, both released October 29, 2019, proposed to require partnerships to report partners' shares of net unrecognized Section 704(c) gain or loss as of the beginning and end of the partnership's 2019 taxable year. The draft instructions to these forms did not include a definition of "net unrecognized Section 704(c) gain or loss." Solely for purposes of completing the 2019 Forms 1065, Schedule K-1, Item N, and 8865, Schedule K-1, Item G, this notice defines a partner's share of "net unrecognized Section 704(c) gain or loss" as the partner's share of the net (net means aggregate or sum) of all unrecognized gains or losses under section 704(c) of the Code (Section 704(c)) in partnership property, including Section 704(c) gains and losses arising from revaluations of partnership property.

Commenters have requested additional guidance with respect to Section 704(c) computations, such as guidance with respect to the issues described in Notice 2009-70, 2009-34 I.R.B. 255. For purposes of reporting for 2019, partnerships and other persons should generally resolve these issues in a reasonable manner, consistent with prior years' practice for purposes of applying Section 704(c) to partners.

Net unrecognized Section 704(c) gain or loss reporting will not apply to publicly traded partnerships (defined in section 7704 of the Code) and their partners for 2019, and thereafter, until further notice.

#### AT-RISK ACTIVITY REPORTING

The draft of the 2019 Form 1065, Item K, released September 30, 2019, requires partnerships to indicate if they have aggregated activities for purposes of the at-risk limitation rules under section 465 of the Code (Section 465). The draft of the instructions for the 2019 Form 1065, Schedule K-1 (to which the draft instructions for the 2019 Form 8865 refer), released October 29, 2019, included a new paragraph at page 12, At-Risk Limitations, At-Risk Activity Reporting Requirements, that would expressly require partnerships or other persons that have items of income, loss, or deduction reported on the Schedule K-1 from more than one activity that may be subject to limitation under Section 465 at the partner level to report certain additional information separately for each activity on an attachment to a partner's Schedule K-1. The new paragraph would require the partnership or other person to identify the at-risk activity, the items of income, loss, or deduction for the activity, other items of income, loss, or deduction, partnership liabilities, and any other information that relates to the

activity, such as distributions and partner loans. This requirement in the draft instructions for the 2019 Form 1065 is in addition to longstanding at-risk reporting requirements included in the instructions to the Form 1065. See Part II, Information About the Partner; Item K Partner's Share of Liabilities.

Based on comments received, the Treasury Department and the IRS have become aware that certain partnerships and other persons may be unable to timely comply with the newly added requirement to report additional information about each at-risk activity separately for 2019. Partnerships and other persons required to furnish and file Form 1065, Schedule K-1 or Form 8865, Schedule K-1, will not be required to report information for each at-risk activity separately for 2019 that was not previously required to be reported for the 2018 partnership taxable year. Partnerships must still indicate in Item K on Form 1065 whether they have aggregated activities for Section 465 at-risk purposes for 2019.

Nothing in this notice relieves partnerships and partners from complying with the requirements of Form 6198, At-Risk Limitations, for 2019. In particular, partnerships must continue to comply with the instructions to Form 6198 for 2019, which require partnerships to furnish their partners with a separate statement of income, expenses, and deductions for each at-risk and not-at-risk activity.

#### **PENALTY RELIEF**

Taxpayers who follow the provisions of this notice will not be subject to any penalty for reporting in accordance with the guidance provided in this notice, including a penalty under section 6722 for failure to furnish correct payee statements, section 6698

for failure to file a partnership return that shows required information, and section 6038 for failure to furnish information required on a Schedule K-1 (Form 8865).

#### CONTACT INFORMATION

The principal author of this notice is Kara Altman of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice, contact Kara Altman at 202-317-5576 (not a toll-free number).