

# Instructions for Form 8082

(Revised December 1987)

## Notice of Inconsistent Treatment or Amended Return (Administrative Adjustment Request (AAR))

(Section references are to the Internal Revenue Code unless otherwise noted.)

### General Instructions

#### Paperwork Reduction Act Notice

We ask for this information to carry out the Internal Revenue laws of the United States. We need it to ensure that taxpayers are complying with these laws and to allow us to figure and collect the right amount of tax. You are required to give us this information.

#### Purpose of Form

**Note:** The words "pass through entity" are used in these instructions to mean partnership, S corporation, or REMIC (real estate mortgage investment conduit). The word "item" is used in these instructions to mean partnership, S corporation, or REMIC item.

If you are a partner, S corporation shareholder, or residual holder of an interest in a REMIC, you generally must report items consistent with the way they were reported to you by the partnership (S corporation) on Schedule K-1 or by the REMIC on Schedule Q. However, there may be reasons why you wish to report these items differently.

Use Form 8082 to notify the IRS of any such inconsistency between your tax treatment of an item, and the way the pass through entity treated and reported the same item on its return. Also use the form to notify the IRS if you did not receive Schedule K-1 from the partnership (S corporation) or Schedule Q from the REMIC by the due date for filing your return (including extensions).

Form 8082 is also used by a TMP (tax matters partner or tax matters person) to make an administrative adjustment request (AAR) on behalf of the pass through entity.

#### Who Must File

**Note:** All references to Schedule K-1 and Schedule Q in the following instructions also refer to any "similar statement" you may have received from the pass through entity as a substitute for Schedule K-1 or Schedule Q.

Generally, file Form 8082 if **any one** of the following applies:

- a. **Schedule K-1 or Schedule Q is incorrect.** You believe an item was not properly reported on the Schedule K-1 (including any attached schedule) you received from the partnership or S corporation or the Schedule Q you received from the REMIC. The same is true if you believe an item from your Schedule K-1 (Schedule Q) is incorrect but it is not an item that otherwise has to be reported on your tax return. For example, if you believe that the percentage shown as your ownership of capital at the end of the year was not properly reflected on Schedule K-1, file Form 8082 to report this, even though you are not otherwise required to report that percentage on your tax return. If you discover this kind of inconsistency after filing your original return, file an amended return to report it. In the space provided on the amended return for writing explanations, write "See attached Form 8082." In this case, no amounts need to be entered on the amended return if the Form 8082 item is the only reason for filing the amended return.
- b. **Partnership, S corporation, or REMIC has not filed a tax return or given you a Schedule K-1 or Schedule Q.** The pass through entity has not filed a tax return or given you a Schedule K-1 (Schedule Q) by the time you are required to file your tax return, and there are items you must include on your return.
- c. **AAR as an amended return.** You are filing an amended return (administrative adjustment request (AAR) for pass through entity items) on which you are changing the amount or treatment of any item from the way you reported it on your original or previously filed return.

Generally, you may file an amended return to change items from a pass through entity at any time that is:

1. within 3 years after the later of:
  - a. the date on which the pass through entity return for such year is filed, or
  - b. the last day for filing the pass through entity return for such year (excluding extensions); **and**
2. before a notice of final pass through entity administrative adjustment for the tax year is mailed to the tax matters partner or tax matters person.

A partnership return (REMIC return) is generally due by the 15th day of the fourth month following the close of the partnership's (REMIC's) tax year.

An S corporation return is generally due by the 15th day of the third month following the close of the S corporation's tax year.

- d. **AAR as a substituted return.** You are filing an administrative adjustment request (AAR) as the tax matters partner (or tax matters person) on behalf of the pass through entity. File an amended Form 1065 (Form 1120S or Form 1066) but do not enter any amounts on the form itself. On an attached Form 8082 identify the amount or treatment of any item you are changing from the way you reported it on your return as originally filed or as you later amended it. The tax matters partner (or tax matters person) must sign the amended Form 1065 (Form 1120S or Form 1066). If the tax matters partner (or tax matters person) is requesting treatment of the AAR as a substituted return, on the top margin enter "See attached Form 8082 for AAR per IRC section 6227(b)(1)." Attach revised Schedules K-1 (Schedules Q) showing the changes made by the administrative adjustment request for each partner (shareholder or residual holder).

**Caution:** If you do not notify the IRS that you are reporting an item (Part I, line 1, box a) inconsistently, any deficiency (including any penalties applicable to the deficiency) that results from a computational adjustment to make your amount or treatment of the item consistent with the amount or treatment of the item on the partnership, S corporation, or REMIC's return may be assessed immediately. An inconsistent item can exist on either your original or amended return.

## Exceptions

You do not have to file Form 8082:

- a. For any amount of loss, deduction, or investment credit that you don't report on your return from Schedule K-1 (Schedule Q) because the amount is otherwise limited by law (such as a loss limited by the at-risk rules); OR
- b. If you are a partner and your partnership has 10 or fewer partners, each of whom is an individual (other than a nonresident alien) or an estate, and each partner's proportionate share of each partnership item is the same as his or her proportionate share of every other item, and an election has not been made (or if made, the election has been revoked) under section 6231(a)(1)(B)(ii) to have the consolidated partnership audit rules apply.
- c. If you are a shareholder and your S corporation has 5 or fewer shareholders, each of whom is an individual or an estate, and an election has not been made under regulation section 301.6241-1T(c)(2)(v)(A) to have the consolidated audit rules apply.
- d. If you are a residual holder and your REMIC has 10 or fewer residual holders, each of whom is an individual (other than a nonresident alien) or an estate, and an election under section 6231(a)(1)(B)(ii) has not been made by the REMIC.

## Penalty

If you intentionally or negligently disregard the requirements for filing Form 8082, you may be subject to the negligence penalty under section 6653(a). This penalty is in addition to any tax that results from a computational adjustment to make your amount or treatment of the item consistent with the amount or treatment of the item on the pass through entity's return.

## How Many Forms To Complete

You must complete and file a separate form for each pass through entity for which you are reporting an inconsistent or AAR item. If you are reporting more than four inconsistent or AAR items from one pass through entity, use additional Forms 8082.

## When To File

Attach Form 8082 when you file your original or amended tax return.

## Specific Instructions

Specific instructions for most of the lines have been provided. Those lines that do not appear in the instructions are self-explanatory.

**Note:** *If the pass through entity did not file a return or give you a Schedule K-1 (Schedule Q) by the time you are required to file your return, complete Parts I and II to the best of your knowledge.*

*If you can't complete an item in Part I or Part II, enter "See Part III" in the entry space for that item.*

## Part I

**Line 1.**—Check box **a** if either 1. or 2. below applies:

1. You believe an item was not properly reported on the Schedule K-1 (Schedule Q) you received; **or**
2. The pass through entity has not filed a tax return or given you a Schedule K-1 (Schedule Q) by the time you are required to file your tax return.

Check box **b** if you are filing an amended return (administrative adjustment request (AAR)) on which you are changing the amount or treatment of any item from the way you reported it on your return or in the case of a tax matters partner (person), the pass through entity return as originally filed or as you later amended it.

Check box **a** and box **b** if you are reporting an item on your amended return (AAR) differently from the way that you reported the item on your original return and inconsistently with the way the pass through entity reported the item.

## Lines 2, 3a, 3b, 4, and 5a.

—Generally, the information for these items can be found on the Schedule K-1 (Schedule Q). Enter on line 3a, the pass through entity's identifying number. Enter on line 3b, the tax shelter registration number as shown on the Schedule K-1. Enter "not applicable" if no registration number is reported on the Schedule K-1. Line 3b does not apply to residual holders. The tax year of a REMIC (line 5a) always ends with December 31.

## Part II

**Column (a).**—If you received a Schedule K-1 (Schedule Q), enter the line number and description shown on the schedule. Otherwise, enter a complete description of the item.

**Column (b).**—If you believe that the amount of any item shown on the Schedule K-1 (Schedule Q) was not properly reported, check "Amount of item."

If you believe that the treatment of any item was not properly reported (for example, a long-term capital gain that a partner thinks should be a short-term capital gain) on the Schedule K-1 (Schedule Q), check "Treatment of item."

Check both parts of column **(b)** if **either** 1. or 2. below applies:

1. You believe that both the amount and treatment of the item shown on the Schedule K-1 (Schedule Q) were not properly reported, or you believe an item was omitted from the Schedule K-1 (Schedule Q); or
2. The pass through entity did not file a return or give you a Schedule K-1 (Schedule Q).

**Note:** *If you check only "Treatment of item," you do not need to complete columns (d) and (e).*

**Column (c).**—If Form 8082 is being attached to your original return, enter the amount as shown on the Schedule K-1 (Schedule Q) you received.

If Form 8082 is being attached to your amended return, enter the amount as shown on your return as originally filed or as you last amended it prior to the current amendment.

If the pass through entity did not file a return, or if you did not receive a Schedule K-1 (Schedule Q), or if you are reporting items that you believe were omitted from the Schedule K-1 (Schedule Q), enter zero in column **(c)**.

## Part III

Explain in detail the reason(s) you are reporting an inconsistent or amended item as follows:

- a. If you believe that the amount or treatment of any item shown on the Schedule K-1 (Schedule Q) was not properly reported, state how you think the item should be treated and why.
- b. If the pass through entity has not filed a tax return by the time you are required to file your tax return, enter as the explanation, "Partnership (S corporation or REMIC) return not filed."
- c. If the pass through entity did not give you a Schedule K-1 (Schedule Q) by the time you are required to file your tax return, enter as the explanation "Schedule K-1 (Schedule Q) or similar statement not received."
- d. If you are filing an amended return (administrative adjustment request (AAR)) on which you are changing the amount or treatment of any item on your original return, explain why you are changing the item.
- e. If you believe an item was omitted from the Schedule K-1 (Schedule Q), enter as the explanation "Item was omitted from Schedule K-1 (Schedule Q) or similar statement."

If you need more space for your explanation, attach additional sheets. Clearly identify on each sheet the item to which the explanation relates. Be sure to also include your name and identifying number on each additional sheet.