



# IRS Nationwide Tax Forum | 2020

The Bipartisan Budget Act (BBA)  
of 2015's Centralized Partnership  
Audit Regime

# Learning Objectives

At the end of this course, you will be able to:

- Describe the filing responsibilities under the BBA
- Explain when a partnership can elect-out of BBA
- Determine who can function as a partnership representative
- Identify when administrative adjustment requests may be filed under the BBA
- Explain the audit process and post-audit process

# New Partnership Audit Regime

All partnerships are subject to BBA for taxable years beginning on or after January 1, 2018

- Certain small partnerships may elect out of BBA
- Partnerships may elect into BBA for certain taxable years before 2018

BBA is intended to improve the IRS's ability to perform partnership audits

- GAO and TIGTA found that IRS performed few partnership audits, despite the fact that the number of partnerships and partners, and the value of the assets they control, continues to rise
- A major cause of the low partnership audit rate is the complexity of the TEFRA audit regime and the resulting litigation

## Some New Terms

- AAR – administrative adjustment request
- FPA – final partnership adjustment
- IU – imputed underpayment
- Modification – refers to request to modify the IU
- NAP – notice of administrative proceeding
- NOPPA (PPA) – notice of proposed partnership adjustment
- PR/DI – partnership representative/designated individual
- PRI – partnership-related items
- Push out – refers to election to push out underlying adjustments to partners instead of paying the IU

# General Rules for BBA

- Audits are conducted at the partnership level
- The partnership must pay the IU unless it elects to “push out” the adjustments to the reviewed year partners
- Partnerships must select an eligible PR who has sole authority to act on behalf of the partnership for purposes of BBA
  - PR’s actions bind the partners and the partnership
- Partners must report items consistent with the partnership return unless they attach notification of the inconsistency to their return
- Partnership amends returns using AAR process
  - No corrected Schedules K-1
- PR must be designated each tax year on return



CENTRALIZED PARTNERSHIP PROCESS

TIMEFRAMES

TAXPAYER NOTIFICATIONS

**FILING/AUDIT SELECTION**

**Taxpayer Files Original Return**

- For all tax years beginning 01/01/2018 and forward, partnerships are automatically BBA unless taxpayer meets the criteria and "Elects Out of BBA" on a timely filed return
- Partnership Representative (PR) is designated on the filed return and will have sole authority to act on behalf of the partnership

**AAR**

- If filed, must be filed prior to issuance of NAP

**Return Selected For Examination**

- Verification of PR by exam team

**30 DAYS**

Issuance of NAP must be at least 30 days after date of L2205D

Notice of selection for examination  
**Letter 2205D**

Notice of administrative proceeding (NAP)  
**Letter 5893/5893A**

**AUDIT PROCESS**

**Examination**

- Examination steps to complete the audit issues generally remain unchanged under BBA procedures

**Notice of Preliminary Partnership Examination Changes**

**Taxpayer Can File an Appeal**

- Partnership can not appeal an issue/matter more than once

**270 DAYS**

Issuance of the NOPPA starts the 270 day modification request period

Notice of preliminary partnership exam changes and IU (summary report package)  
**Letter 5895 Form 14791/886A**

BBA 30-day letter  
**Letter 5891 Form 14791/886A**

Notice of proposed partnership adjustment (NOPPA)  
**Letter 5892/5892A Form 14792/886A**

**Notice of Proposed Partnership Adjustment (NOPPA)**

- Final imputed underpayment (IU) is determined

**POST AUDIT**

**Modification**

- Modification requests may be submitted to reduce the IU amount shown on the NOPPA
- The partnership is responsible for providing all required information to the IRS for review and approval of the request

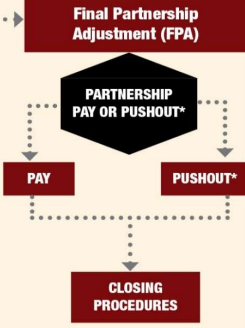
**\*Pushout Responsibilities**

- Partnership is no longer liable for the IU
- Partnership will provide statements to its partners, and the IRS, on what adjustments and amounts, are being pushed out

**45/90 DAYS**

Issuance of FPA starts:  
 • 45 days to elect pushout  
 • 90 days to petition court

Notice of final partnership adjustment (FPA)  
**Letter 5933/5933A Form 15027/886A**





# Filing Responsibilities – Election out

- If eligible, elect out of the BBA regime
  - Each partner must be either an individual, C corporation, any foreign entity that would be treated as a C corporation were it domestic, an S corporation or an estate of a deceased partner
  - 100 or fewer partners including the shareholders of an S corporation partner (i.e., a partnership with 50 individual partners, 1 S-corp partner that has 40 shareholders would count as 91)
  - Eligible partners DO NOT include any trusts including grantor trusts and disregarded entities (such as a SMLLC of an individual)
- Election out made annually on an original timely filed return, including extension:
  - Form 1065, Schedule B, Question 25
  - Schedule B-2

## Filing Responsibilities – PR Designation

- If not electing out, Designate the PR
  - Has sole and binding authority to act on behalf of the partnership
  - Does not need to be a partner
  - Can be an entity (including the partnership itself) but would need to name a Designated Individual (DI)
  - Must have substantial presence in the U.S.
  - PR Can designate POA to give representation authority to CPAs, lawyers, etc..
- PR designation made annually
  - Form 1065 after Schedule B, question 25
- Can only be changed with the filing of an AAR that reports other changes or once a Notice of Selection for Examination (L2205-D) is mailed by the IRS
  - Form 8979, Partnership Representative Revocation/Resignation and Designation is used to change the PR



## Filing Responsibilities – Administrative Adjustment Requests (AAR)

- AAR must be filed to correct errors on original return
  - Can be filed no later than three years after the later of the date the partnership return for such partnership taxable year was filed or the last day for filing such partnership return (determined without regard to extensions)
  - Cannot be filed after NAP is issued
  - Partnership can ‘self modify’ an imputed underpayment using only certain modifications - no partner amended return/alternative procedure modification allowed in AAR.
  - Partnership can ‘self push out’

# Filing Responsibilities – How to File AAR

- If paper filed, use F1065X
- If e-filed, use F8082 along with F1065 (with amended return box checked). This requirement is not clearly stated in the instructions to either the F8082 or the F1065.
- If ‘self modifying’ an IU, attach Form 8980 and applicable, related forms (F8983 or F15028)
- If ‘self pushing out’, attach Forms 8985/8986s. If pushing out, CANNOT modify adjustments being pushed out
- If paying an IU (instead of ‘self pushing out’), payment must be made at the same time the AAR is filed.
  - If using F8082, the IU is reported on F1065, page 1, line 25
  - If using F1065X, the IU is reported on F1065X, page 4, Part IV, line 1
- The PR/DI signs AAR

## Audit Process – Notice of Selection for Examination

- Notice of Selection Letter 2205-D (used for all Partnerships) will be sent only to the Partnership
  - Provides opportunity to designate different PR
  - Provides opportunity to file an AAR
  - Provides opportunity to revoke election out

## Audit Process – Notice of Administrative Proceeding

- Notice of Administrative Proceeding or NAP (L5893/5893-A) will be sent to both the Partnership and PR
  - Will not be mailed earlier than 30 days from the issuance of the Notice of Selection for Examination (L2205-D)
  - AAR cannot be filed after the NAP date

## Audit Process – Examination of Issues

- BBA does not change Subchapter K
- Partnership-related items (PRIs) are audited at the partnership level
- Generally, examination of issues under BBA remain the same as under TEFRA
- Once the examination of issues is completed, only the PR is provided:
  - Notice of Preliminary Partnership Exam Changes and IU or Summary Report Package (L5895/F14791)
- If the PR does not agree with the preliminary adjustments, a BBA 30-day Letter Package (L5891/F14791) will be issued to the PR/DI
- If the PR **does** agree with the preliminary adjustments, a Notice of Proposed Partnership Adjustments or NOPPA (L5892/5892-A / F14792) will be issued to both the Partnership and PR.

## Audit Process – Appealing Merits of Adjustment Issues

- Upon receipt of the BBA 30-day Letter Package, PR may request review from the IRS Appeals Office on the merits of the issues, the IU calculation and penalties.
- If the PR raises a new issue after a case is received in Appeals, the case will be returned to the examining team to consider.



## Audit Process – Notice of Proposed Partnership Adjustments

- Notice of Proposed Partnership Adjustments or NOPPA (L5892/5892-A / F14792) will be mailed to both the Partnership and PR
  - Provides opportunity to agree, waive modification, waive receipt of FPA
  - Date of Notice starts the 270-day period for the PR to request modification

## Post Audit Process – Request Modification

- PR submits request using Form 8980 and applicable, related forms after the NOPPA is issued
  - PR has 270 days to submit request and information, may request extension (F8984), may waive remaining period (F8981)
  - IRS has 270 days (+ same period of time extension is approved) from when all information is submitted to perform review/due diligence
- Upon completion of review, IRS will provide the PR a Modification Request Determination Package (L5975/F15027)
  - Provides opportunity to agree, request management conference, request Appeals review (note: Appeals will not review merits of adjustment issues twice)

## Post Audit Process – Notice of Final Partnership Adjustment

- Notice of Final Partnership Adjustments or FPA (L5933/5933-A/F15027) will be mailed to both the Partnership and PR
  - Provides opportunity to agree, elect push out, petition court
  - Date of Notice starts the 45-day period to elect push out and the 90-day period to file a court petition

## Post Audit Process – Push Out Process

- In lieu of paying an IU, PR can elect to push out 1 or more IUs
- Underlying adjustments (not the IU) are pushed out to reviewed year partners
- General process:
  - Form 8988 is submitted to IRS within 45 days from the date on the FPA
  - Within 60 days after all partnership adjustments become finally determined\*\*
    - Push Out Forms (F8986) are furnished to partners, and
    - Push Out Tracking and Push out Forms (F8985/8986s) are submitted to IRS

\*\*Partnership adjustments become finally determined upon the latter of the expiration of the time to file a court petition (90 days after the FPA) or, if a petition is filed, the date when the court's decision becomes final.

## Summary

- BBA applies to tax years 2018 and forward
- Partnerships have many options under BBA
- Additional information is on [IRS.gov](https://www.irs.gov)