

Have You Updated Your LLC or Partnership Agreement Yet?

Big Changes to IRS Audits Coming

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In 2015 Congress decided to "repeal and replace" the old tax audit regime for entities that file Form 1065 Partnership returns. And while the old rules were quite complex, the new ones aren't simple.

These new rules went into effect for years beginning after December 31, 2017. So for those years beginning on or after January 1st consideration should be given to amending your Partnership agreement to deal with the potential consequences of the new regulations.

WHAT'S CHANGED?

A Personal Representative or "PREP" will be the one who makes the decisions or elections regarding any IRS audit. If the Entity doesn't designate one to handle the audit quickly, the IRS will. Amending your agreement to identify someone or allow the General Partner or Managing Member the authority to designate one will prevent this.

All decisions will now be made at the entity level and are binding. If someone disagrees with how something was handled, they must file a formal notice with the IRS. The amendment to the partnership agreement should provide clear guidance on how to protect the rights and interests of the partners/members with the appropriate indemnifications in place.

The statute of limitations is at the entity level, not the individuals. If the IRS makes a large enough change, the statute may be extended to 6 years from 3. Everyone involved will now need to hold on to their records for 7 years.

THE BOTTOM LINE IS....?

The Entity may have to pay any tax, interest, and any penalties due at the highest individual tax rate. The IRS does not have the authority to force the partners to amend their returns. This could leave current partners on the hook for something past partners owe.

IS THERE A WAY OUT?

For those Entities that qualify, you may be able to elect out of these new rules, but the election must be made annually and included with the tax return. The qualifications are quite specific. For those that don't qualify or make the annual election, an election at the time of the audit may be available to the Entity to push the adjustments down to the partners thereby requiring the partners to amend their returns, but the timing is very specific.

WHAT ABOUT THE STATES?

Some states have already indicated they are not going to follow this new procedure. This may result in the Entity paying the federal tax but the partners still being responsible for the state taxes.

These are just a few of the major changes that will affect partnerships in 2018. We would be happy to discuss the strategic planning and compliance implications of the new law for you and work with your attorneys on any changes or modifications to legal documents that need to be implemented.

For more information, please contact:



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Victoria has over 25 years of experience in providing tax consulting, compliance and tax audit representation to closely held businesses and the owners of closely held businesses. She delivers a full range of tax services in covering federal and multi-state laws and regulations for partnerships, S and C corporations, and individuals.