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Reg. Section 301.6221(b)-1(c)(3)

Election out for certain partnerships with 100 or fewer partners.

(a) In general. The provisions of subchapter C of chapter 63 of the Internal Revenue Code (subchapter C of chapter 63) do not apply for any partnership taxable year for which an eligible partnership under paragraph (b) of this section makes a valid election in accordance with paragraph (c) of this section. For rules regarding deficiency procedures, see subchapter B of chapter 63 of the Internal Revenue Code and §§301.6211-1 through 301.6215-1.

(b) Eligible partnership.

(1) In general. Only an eligible partnership may make an election under this section. A partnership is an eligible partnership for purposes of this section if-

(i) The partnership has 100 or fewer partners as determined in accordance with paragraph (b)(2) of this section, and

(ii) Each statement the partnership is required to furnish under section 6031(b) for the partnership taxable year is furnished to a partner that was an eligible partner (as defined in paragraph (b)(3) of this section) for the partnership's entire taxable year.

(2) 100 or fewer partners.

(i) In general. Except as provided in paragraph (b)(2)(ii) of this section, a partnership has 100 or fewer partners if the partnership is required to furnish 100 or fewer statements under section 6031(b) for the taxable year.

(ii) Special rule for S corporations. For purposes of this paragraph (b)(2), a partnership with a partner that is an S corporation (as defined in section 1361(a)(1)) must take into account each statement required to be furnished by the S corporation to its shareholders under section 6037(b) for the taxable year of the S corporation ending with or within the partnership's taxable year.

(iii) Examples. The following examples illustrate the provisions of this paragraph (b)(2). For purposes of these examples, each partnership is required to file a return under section 6031(a):

Example (1). During its 2020 partnership taxable year, Partnership has four partners each owning an interest in Partnership. Two of the partners are Spouse 1 and Spouse 2 who are married to each other during all of 2020. Spouse 1 and Spouse 2 each own a separate interest in Partnership. The two other partners are unmarried individuals. Under section 6031(b), Partnership is required to furnish a separate statement (that is, Schedule K-1 (Form 1065), Partner's Share of Income, Deductions, Credits, etc.) to each individual partner, including separate statements to Spouse 1 and Spouse 2. Therefore, for purposes of this paragraph (b)(2), Partnership has four partners during its 2020 taxable year.

Example (2). The facts are the same as in Example 1 of this paragraph (b)(2)(iii), except Spouse 2 does not separately own an interest in Partnership during 2020 and Spouse 1 and Spouse 2 live in a community property state, State A. Spouse 1 acquired the partnership interest in such a manner that by operation of State A law, Spouse 2 has a community property interest in Spouse 1's partnership interest. Because Spouse 2's community property interest in Spouse 1's partnership interest is not taken into account for purposes of determining the number of statements Partnership is required to furnish under section 6031(b), Partnership is required to furnish a statement to Spouse 1, but not to Spouse 2. Therefore, for purposes of this paragraph (b)(2), Partnership has three partners during its 2020 taxable year.

Example (3). At the beginning of 2020, Partnership, which has a taxable year ending December 31, 2020, has three partners- individuals A, B, and C. Each individual owns an interest in Partnership. On June 30, 2020, Individual A dies, and A's interest in Partnership becomes an asset of A's estate. A's estate owns the interest for the remainder of 2020. On September 1, 2020, B sells his interest in Partnership to Individual D, who holds the interest for the remainder of the year. Under section 6031(b), Partnership is required to furnish five statements for its 2020 taxable year-one each to Individual A, the estate of Individual A, Individual B, Individual C, and Individual D. Therefore, for purposes of this paragraph (b)(2), Partnership has five partners during its 2020 taxable year.

Example (4). During its 2020 taxable year, Partnership has 51 partners-50 partners who are individuals and S, an S corporation. S and Partnership are both calendar year taxpayers. S has 50 shareholders during the 2020 taxable year. Under section 6031(b), Partnership is required to furnish 51 statements for the 2020 taxable year-one to S and one to each of Partnership's 50 partners who are individuals. Under section 6037(b), S is required to furnish a statement (that is, Schedule K-1 (Form 1120-S), Shareholder's Share of Income, Deductions, Credits, etc.) to each of its 50 shareholders. Under paragraph (b)(2)(ii) of this section, the number of statements required to be furnished by S under section 6037(b), which is 50, is taken into account to determine whether partnership has 100 or fewer partners. Accordingly, for purposes of this paragraph (b)(2), Partnership has a total of 101 partners (51 statements furnished by Partnership to its partners plus 50 statements furnished by S to its shareholders) and is therefore not an eligible partnership under paragraph (b)(1) of this section. Because Partnership is not an eligible partnership, it cannot make the election under paragraph (a) of this section.

Example (5). During its 2020 taxable year, Partnership has two partners, A, an individual, and E, an estate of a deceased partner. E has 10 beneficiaries. Under section 6031(b), Partnership is required to furnish two statements, one to A and one to E. Any statements that E may be required to furnish to its beneficiaries are not taken into account for purposes of this paragraph (b)(2). Therefore, for purposes of this paragraph (b)(2), Partnership has two partners.

(3) Eligible Partners.

(i) In general. For purposes of paragraph (b)(1)(ii) of this section, the term eligible partner means a partner that is an individual, a C corporation (as defined by section 1361(a)(2)), an eligible foreign entity described in paragraph (b)(3)(iii) of this section, an S corporation, or an estate of a deceased partner. An S corporation

is an eligible partner regardless of whether one or more shareholders of the S corporation are not an eligible partner.

(ii) Partners that are not eligible partners. A partner is not an eligible partner under paragraph (b)(3)(i) of this section if the partner is-

(A) A partnership,

(B) A trust,

(C) A foreign entity that is not an eligible foreign entity described in paragraph (b)(3)(iii) of this section,

(D) A disregarded entity described in §301.7701-2(c)(2)(i),

(E) An estate of an individual other than a deceased partner, or

(F) Any person that holds an interest in the partnership on behalf of another person.

(iii) Eligible foreign entity. For purposes of this paragraph (b)(3), a foreign entity is an eligible partner if the foreign entity would be treated as a C corporation if it were a domestic entity. For purposes of the preceding sentence, a foreign entity would be treated as a C corporation if it were a domestic entity if the entity is classified as a per se corporation under §301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8), is classified by default as an association taxable as a corporation under §301.7701-3(b)(2)(i)(B), or is classified as an association taxable as a corporation in accordance with an election under §301.7701-3(c).

(iv) Examples. The following examples illustrate the rules of this paragraph (b)(3). For purposes of these examples, each partnership is required to file a return under section 6031(a):

Example (1). During the 2020 taxable year, Partnership has four equal partners. Two partners are individuals. One partner is a C corporation. The fourth partner, D, is a partnership. Because D is a partnership, D is not an eligible partner under paragraph (b)(3)(i) of this section. Accordingly, Partnership is not an eligible partnership under paragraph (b)(1) of this section and, therefore, cannot make the election under paragraph (a) of this section for its 2020 taxable year.

Example (2). During its 2020 taxable year, Partnership has four equal partners. Two partners are individuals. One partner is a C corporation. The fourth partner, S, is an S corporation. S has ten shareholders. One of S's shareholders is a disregarded entity, and one is a qualified small business trust. S is an eligible partner under paragraph (b)(3)(i) of this section even though S's shareholders would not be considered eligible partners if those shareholders held direct interests in Partnership. See paragraph (b)(3)(i) of this section. Accordingly, Partnership meets the requirements under this paragraph (b)(3) for its 2020 taxable year.

Example (3). During its 2020 taxable year, Partnership has two equal partners, A, an individual, and C, a disregarded entity, wholly owned by B, an individual. C is not an eligible partner under paragraph (b)(3)(i) of this section. Accordingly, Partnership is not an eligible partnership under paragraph (b)(1) of this section and, therefore, is ineligible to make the election under paragraph (a) of this section for its 2020 taxable year.

(c) Election.

(1) In general. An election under this section must be made on the eligible partnership's timely filed return, including extensions, for the taxable year to which the election applies and include all information required by the Internal Revenue Service (IRS) in forms, instructions, or other guidance. An election is not valid unless the partnership discloses to the IRS all of the information required under paragraph (c)(2) of this section and, in the case of a partner that is an S corporation, the shareholders of such S corporation. An election once made may not be revoked without the consent of the IRS.

(2) Disclosure of partner information to the IRS. A partnership making an election under this section must disclose to the IRS information about each person that was a partner at any time during the taxable year of the partnership to which the election applies, including each partner's name and correct U.S. taxpayer identification number (TIN) (or alternative form of identification required by forms, instructions, or other guidance), each partner's Federal tax classification, an affirmative statement that the partner is an eligible partner under paragraph (b)(3)(i) of this section, and any other information required by the IRS in forms, instructions, or other guidance. If a partner is an S corporation, the partnership must also disclose to the IRS information about each shareholder of the S corporation that was a shareholder at any time during the taxable year of the S corporation ending with or within the partnership's taxable year, including each shareholder's name and correct TIN (or alternative form of identification as prescribed by forms, instructions, or other guidance), each shareholder's Federal tax classification, and any other information required by the IRS in forms, instructions, or other guidance.



(3) Partner notification. A partnership that makes an election under this section must notify each of its partners of the election within 30 days of making the election in the form and manner determined by the partnership.

(d) Election made by a partnership that is a partner.

(1) In general. The fact that a partnership has made an election under this section does not affect whether the provisions of subchapter C of chapter 63 apply to any other partnership, including a partnership in which the partnership making the election is a partner. Accordingly, the provisions of subchapter C of chapter 63 that apply to partners in a partnership that has not made an election under this section apply, to the extent provided in the regulations under subchapter C of chapter 63, to partners (that are themselves partnerships that have made an election under this section) in their capacity as partners in the other partnership.

(2) Examples. The following examples illustrate the rules of paragraph (d)(1) of this section. For purposes of these examples, each partnership is required to file a return under section 6031(a):

Example (1). During its 2020 taxable year, Partnership, a calendar year taxpayer, has two partners. One partner, A, is also a calendar year partnership. A files a valid election under this section with its timely filed partnership return for its 2020 taxable year. Partnership does not file an election under this section. Notwithstanding A's valid election under this section, with respect to A's interest in Partnership, A is subject to the rules applicable to partners in a partnership subject to the rules under subchapter C of chapter 63, including the consistency requirements of section 6222 and the regulations thereunder.

Example (2). The facts are the same as Example 1 of this paragraph (d)(2). The IRS mails to Partnership a notice of final partnership adjustment under section 6231 with respect to Partnership's 2020 taxable year. Partnership timely elects the alternative to payment of imputed underpayment under section 6226 and the regulations thereunder. Partnership must provide A with a statement under section 6226 reflecting A's share of the adjustments for Partnership's 2020 taxable year. A is subject to the rules applicable to partners in a partnership subject to the rules under subchapter C of chapter 63 with respect to A's interest in Partnership.

(e) Effect of an election.

(1) In general. An election made under this section is an action taken under subchapter C of chapter 63 by the partnership for purposes of section 6223. Accordingly, the partnership and all partners are bound by an election of the partnership under this section unless the IRS determines that the election is invalid. See §301.6223-2 for the binding nature of actions taken by a partnership under subchapter C of chapter 63.

(2) IRS determination that election is invalid. If the IRS determines that an election under this section for a partnership taxable year is invalid, the IRS will notify the partnership in writing and the provisions of subchapter C of chapter 63 will apply to that partnership taxable year.

(f) Applicability date. These regulations are applicable to partnership taxable years beginning after December 31, 2017.