STRADLEY RONON

# Tax Insights

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## IRS Releases Chief Counsel Advice Discussing Calculation of Imputed Underpayments in a BBA Audit

The IRS issued Chief Counsel Advice 202148006 (CCA) discussing the calculation of imputed underpayments in a BBA audit. The Bipartisan Budget Act of 2015 (BBA) created a centralized partnership audit regime that replaced the partnership audit procedures under the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). Under the BBA centralized partnership audit regime, unless an exception applies: any adjustment to a partnership-related item (PRI) must be determined at the partnership level; any tax from a PRI adjustment must be assessed and collected at the partnership level and any penalty that relates to a PRI adjustment must be determined at the partnership level. Generally, under applicable Treasury Regulations, a partnership adjustment that results in an "imputed underpayment" (IU) must be paid by the partnership.

The IRS Chief Counsel advises, in the CCA, that any "money number" adjustments on a partnership's Form 1065, U.S. Return of Partnership Income, or in the partnership's books and records, goes into the calculation of IU. According to Chief Counsel, under the BBA audit procedures, whether an adjustment is included in the IU calculation does not depend on whether, how, or if the item would be taxed at the partner level. All that matters is that a PRI adjustment was made to a "money number." If any adjustments are duplicative or included within another adjustment, the auditor may treat one of those adjustments solely for the purposes of calculating IU, as zero. Adjustments to non-income items (such as adjustments to the partnership's inside basis in its assets) are positive adjustments when calculating IU. However, a partner's outside basis in the partnership is not a PRI as that information is not on the partnership return, nor is the partnership required to maintain that information on its books and records. Therefore, a partner's outside basis is adjusted outside the BBA procedures.

## IRS Revokes Exempt Organization Compensation Reporting Safe Harbor

The IRS issued Announcement 2021-18 in which it revoked Announcement 2001-33, which deemed tax-exempt organizations to have reasonable cause for purposes of relief from the penalty imposed under Section 6652(c)(1)(A)(ii) if they reported compensation on their annual information returns in the manner described in Announcement 2001-33 instead of in accordance with certain form instructions. (Section references are to the Internal Revenue Code of 1986, as amended.) The revocation is effective for annual information returns required to be filed for tax years beginning on or after Jan. 1, 2022. The IRS's rationale is that it is no longer appropriate for tax-exempt organizations that file Form 990 series returns to rely on Announcement 2001-33 rather than follow the specific instructions to the Form 990 (Return of Organization Exempt From Income Tax), Form 990-EZ (Short Form Return of Organization Exempt From Income Tax) and Form 990-PF (Return of Private Foundation) since tax-exempt organizations have had multiple opportunities to comment on Form 990, Form 990-EZ, Form 990-PF and related instructions over a period of years.

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