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September 11, 2020

Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

**Via Email:** lbi.passthrough.international.form.changes@irs.gov

**RE: Proposed Form 1065 International Item Reporting Changes**

Dear Sir or Madam:

The Internal Revenue Service (the Service) released proposed changes to Form 1065: U.S. Return of Partnership Income (Revised Form 1065) on July 14, 2020. The proposed revisions are intended "to provide greater clarity for partners on how to compute their U.S. income tax liability with respect to items of international tax relevance, including claiming deductions and credits."[1] The Service requested comments on Revised Form 1065 and the New Schedules no later than September 14, 2020. I am pleased to respond to the Service's request for comments on behalf of Tax Executives Institute, Inc. (TEI).

**TEI Background**

TEI was founded in 1944 to serve the needs of business tax professionals. Today, the organization has 57 chapters in North and South America, Europe and Asia.[2] As the preeminent association of in-house tax professionals worldwide, TEI has a significant interest in promoting sound tax policy, as well as the fair and efficient administration of the tax laws, at all levels of government. Our nearly 7,000 individual members represent over 2,800 of the leading companies in the world. We believe the diversity and professional experience of our members – who work across all industries – enables TEI to bring a balanced and practical perspective to the proposed Form 1065 modifications.

1 IR-2020-155 (July 14, 2020).

2 TEI is a corporation organized under the Not-For-Profit Corporation Law of the State of New York. TEI is exempt from U.S. federal income taxation under section 501(c)(6) of the U.S. Internal Revenue Code of 1986 (as amended) (the Code).

**TEI Comments**

TEI commends the Service for soliciting input on Revised Form 1065, including holding two webinars permitting stakeholders to provide the Service with feedback in a public forum. TEI appreciates the opportunity to have participated in the webinars and has the following comments regarding Revised Form 1065 and the New Schedules.

Additional Time to Provide Comments. Comments on Revised Form 1065 are due by September 14th, as noted above. September is a particularly busy time of year for tax compliance professionals with Form 1065s due to the Service by September 15th. Taxpayer compliance and reporting this year has been especially difficult due to the COVID-19 pandemic and the resulting work from home arrangements. TEI therefore requests the Service provide an additional 30 days for taxpayers and other stakeholders to provide comments. While we appreciate the Service typically considers comments submitted after the formal comment period ends, there is no requirement it do so.

Information Collection Safe Harbor from Interest and Penalties. Certain portions of Revised Form 1065 require a partnership to report information or make a determination based on knowledge it does not possess but is instead possessed by its partners. Requiring information disclosures from partners to partnerships is a departure from the current, well-established practice where partners request rather than provide information to partnerships. There is no legal obligation for partners to cooperate and provide information to partnerships under current U.S. federal income tax law. Absent specific state laws regarding such requests, it is a matter of negotiation among the partners to provide the partnership with legal authority to collect such information from its partners under the partnership agreement. Some current partnership agreements may include a such cooperation or information collection provision. Many partnership agreements, however, lack such a provision and therefore must be amended to provide a mechanism requiring recalcitrant partners to provide the necessary information for Revised Form 1065 reporting.

Further, it is unclear what standard of care a partnership must employ when collecting such information given these legal realities. What if a partner is not cooperative or otherwise unresponsive? This may be particularly difficult if a partner is a non-U.S. person unaccustomed to U.S. tax compliance obligations and/or uncomfortable with providing partnerships with personal tax information. Many investment partnerships, moreover, have partners who move in and out of partnerships annually. This makes information sharing and collection a challenge to say the least, especially when the partnership must collect it from former partners.

TEI recommends the Service provide a general safe harbor from interest and penalties for partnerships unable to obtain the required information from partners after exercising "commercially reasonable efforts" to address these practical challenges.

Grandfathering. TEI also recommends a grandfathering provision for partnerships in existence prior to the release of the final Revised Form 1065 exempting such partnerships from the reporting obligations under Revised Form 1065 requiring information from their partners, considering the difficulties discussed above. The grandfathering provisions would not apply to the extent the Service can prove the partnership had actual knowledge of the required information. The grandfathering would expire if the partnership agreement was subsequently amended (other than an amendment made solely to change the composition of the partners) because the partnership would then have an opportunity to request and negotiate the required information sharing terms.

Should the Service prefer to limit the foregoing grandfathering provision, TEI recommends limiting the provision to five years from the date of the release of the final Revised Form 1065, after which the grandfathering provision would no longer apply to pre-existing partnerships. Negotiating amendments to existing partnership agreements is a time-consuming process. Many partnerships are still struggling to amend their existing partnership agreements to provide for the 2015 changes to the partnership audit rules, for example. A five-year grandfathering period gives partners and partnerships the necessary time to renegotiate.

Additional Items for the Revised Form 1065. The standardization process proposed by the Service has the potential to save taxpayers time and compliance costs in the long run. The Service should consider adding additional items traditionally reported using whitepaper to the revised form. Two examples include reporting dual consolidated losses and a breakdown of guaranteed payments. If the Service extends the comment period additional items may be identified by stakeholders.

Dividing the New Schedules. The Revised Form 1065 includes two new schedules: Schedule K-2 (Form 1065) Partners' Distributive Share Items—International and Schedule K-3 (Form 1065) Partner's Share of Income, Deductions, Credits, etc.—International (together, the New Schedules), among other revisions. The lengthy New Schedules will lead to a substantial paperwork burden while providing only limited information in many cases. Partnerships are faced with including a 20-page Schedule K-3 in every partner's K-1, for example, when most of the sections of this schedule will be blank. The same information is currently reported in footnotes encompassing far fewer pages. Large partnerships with more than 200 partners are already saddled with a 2,000-page Form 1065 due to including multiple schedule K-1s in the return. The addition of Schedule K-3 will add 4,000 pages to such a return.[3] While much, if not most, of this information can be transmitted electronically, someone must still review Revised Form 1065 and the New Schedules before the form and partner reporting information can be finalized and distributed. The additional data volume and pages will make this process unmanageable for many partnerships, as well as imposing a significant additional burden on the Service.

TEI recommends stripping out Part II, Part III, Part IV, etc., of the New Schedules and turning them into separate Schedules to be prepared and filed only if the information is relevant to the partnership. Otherwise, partnerships having some foreign source income, but which do not have, for example, a controlled foreign corporation, foreign derived intangible income, or global intangible low-

3 Partners also often receive state-level K-1s, adding to the volume of paperwork.

taxed income, will nevertheless have to include the relevant pages in the New Schedules (all blank) when distributing the schedules to its partners and filing Revised Form 1065.

Delay of the Implementation Timeline. The Service has proposed to implement the final Revised Form 1065 for the 2021 tax year. Given the time required to (i) understand the new reporting forms, (ii) design software information systems to comply with the new reporting regime, and (iii) negotiate and amend partnership agreements, taxpayers and the Service would benefit from additional time to implement the final Revised Form 1065. TEI therefore recommends a one-year delay in the implementation of any final Revised Form 1065 to tax year 2022.

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TEI appreciates the opportunity to provide comments on Revised Form 1065 and the New Schedules. Please contact Benjamin R. Shreck, TEI Tax Counsel, at 202.464.8353 or bshreck@tei.org should you have any questions regarding this letter.

Respectfully submitted,
TAX EXECUTIVES INSTITUTE, INC.

James A Kennedy
*International President*