



November 19, 2020

Internal Revenue Service

via email: LBI.1065.Comments@irs.gov

Re: Comments on Item L. Partner's Capital Account Analysis

Dear Sir or Madam:

The Energy Infrastructure Council ("EIC") is pleased to submit comments on *Item L. Partner's Capital Account Analysis*, in response to the request for comments in the introductory note to the first early release draft of tax year 2020 Instructions for Form 1065, released on October 21, 2020 (the "October 2020 Draft Instructions").

EIC, formerly the Master Limited Partnership Association, is the nation's only trade association representing MLPs.¹ For more than three decades, the association has represented the interests of MLPs in Washington, D.C. and the states. MLPs are an integral way our nation's private sector finances the infrastructure needed to fully utilize newly discovered domestic energy resources – leading to greater energy independence for the United States – and to ensure that a wide variety of energy products make their way efficiently and safely from the production fields to American homes, businesses and communities.

¹ As used herein, the term "MLP" refers to a publicly traded partnership as defined under section 7704.



We appreciate the continued efforts of the IRS and Treasury to provide taxpayers with guidance on the Tax Capital Reporting Requirement and welcome the clarifications provided by the October 2020 Draft Instructions. In order to facilitate administration of the rules with respect to MLPs, we recommend additional clarifications as discussed herein.²

Recommendations

Final instructions should provide that:

- An MLP may determine the beginning tax capital account of a purchaser-transferee as an amount equal to the purchase price, without subtracting the sum of the partner's section 743(b) adjustments.
- An MLP may determine the beginning tax capital account of any non-purchaser transferee to be an amount equal to its initial tax basis in the acquired units, as determined under federal income tax principles, without subtracting the sum of the partner's section 743(b) adjustments.
- In the absence of a specific partner's purchase price information, an MLP may use publicly available trading price information to determine a transferee partner's beginning capital account.

² Unless otherwise indicated, all "§", "section", or "subchapter" references are to the Internal Revenue Code of 1986, as amended (the "Code"), and all "Treas. Reg. §," "Temp. Reg. §," and "Prop. Reg. §" references are to the final, temporary, and proposed regulations, respectively, promulgated thereunder (the "Regulations"). All references to the "IRS" are to the Internal Revenue Service and references to "Treasury" are to the U.S. Department of the Treasury.



- Adjustments to an MLP partner’s tax capital account should take into account all adjustments that affect the partner’s basis in its interest (other than changes to a partner’s share of partnership liabilities), including section 743(b) adjustments. Similarly, adjustments that affect a partner’s section 704(b) capital account but not its adjusted basis in its partnership interest (e.g., adjustments under section 734) should not affect an MLP partner’s tax capital account.
- MLPs are not required to attach a statement showing each remaining section 743(b) adjustment.

Discussion of Recommendations

1. Determination of Beginning Purchaser-Transferee Tax Capital Accounts

The October 2020 Draft Instructions (page 31) provide that “[i]n the case of a sale or exchange of an interest in a publicly traded partnership, you may determine a transferee partner’s beginning capital account by adjusting the partner’s beginning capital account to reflect the transferee partner’s purchase price of the interest rather than entering the transferor partner’s ending capital account.” Presumably, for partners of an MLP that acquire their units by purchase on a public exchange, this approach determines a transferee partner’s beginning capital account to be equal to the partner’s initial cost basis in the acquired units (without regard to the partner’s allocation of partnership liabilities). Final instructions should clarify that the MLP is not required to further adjust this opening capital account balance by subtracting the sum of the partner’s section 743(b) adjustments, as is required in the October 2020 Draft Instructions for the modified outside basis method. As we noted in our August 3, 2020 comment letter on



Notice 2020-43, MLPs cannot separately determine a transferee's section 704(c) remedial allocations and the portion of its section 743(b) adjustment that offsets such allocations (although the sum of these amounts is the same for any unit purchased on an exchange). Thus, it is not possible for MLPs to report a partner's beginning tax capital in a manner that subtracts the partner's section 743(b) adjustment, and final instructions should state clearly that such subtraction is not required.

2. Determination of Beginning Tax Capital Accounts for Non-Purchaser Transferees

Consistent with our recommended approach for determining a purchaser-transferee's beginning tax capital account as an amount equal to the purchaser-transferee's initial basis in its units (without regard to its share of partnership liabilities), the beginning tax capital account of a unitholder acquiring its interest by contribution, tax-free exchange, or gift also should be the unitholder's basis in its units (without regard to its share of partnership liabilities) and with no subtraction of any section 743(b) adjustment. In these cases, a transferee-unitholder's tax capital account should be the same as the transferor-unitholder's tax capital account with respect to the units transferred, i.e., the beginning tax capital account of an interest in an MLP received in exchange for a contribution of money and/or other property should be determined in a manner consistent with section 722, and the beginning tax capital account of a partner in an MLP that acquires its interest other than by purchase or contribution should be determined in a manner consistent with section 742.

3. Use of Publicly Available Trading Price Information to Determine Beginning Capital Accounts



As we noted in our comment letter on Notice 2020-43, in cases in which no acquisition cost information is reported or no acquisition cost information exists, e.g., the broker receives a partner's MLP units upon a transfer at death or in connection with a gift, other broker-to-broker transfers, or transfers of units not held by nominees, the MLPs still will have information regarding the approximate date of the transfer. In such cases, MLPs generally assume that the transferred units were acquired at the low closing price for the month of acquisition.

The October 2020 Draft Instructions provide that "[i]n making the adjustments, you may use information required to be reported to you under Regulations section 1.6031(c)-1T, and publicly available trading price information." This instruction should be expanded to cover the determination of beginning capital account balances and should provide: "In determining a partner's beginning capital account and in making adjustments to such account, you may use information required to be reported to you under Regulations section 1.6031(c)-1T or other publicly available trading price information, including information provided directly by the transferee partner."

4. Adjustments to an MLP Partner's Tax Capital Account

Assuming the starting point for an MLP Partner's tax capital account is equal to its outside basis without regard to its share of partnership liabilities and without subtracting the partner's section 743(b) adjustment, the ongoing adjustments to such account to reflect the partner's distributive share of partnership income, gain, loss, deduction, and credits must include adjustments for all items that affect the partner's tax basis in its interest (other than changes to the partner's share of partnership liabilities), including adjustments to the partner's section 743(b) adjustment. Failing to



adjust an MLP partner’s capital account (assuming it will include the partner’s the section 743(b) adjustment) for changes to such adjustment, e.g., to reflect cost recovery, would yield an inaccurate picture of the partner’s capital account.

Similarly, under this approach, MLPs should not be required to adjust partner tax capital accounts for changes to a partner’s share of any increase or decrease to the adjusted tax basis of partnership property under section 734, because such changes do not affect a partner’s basis in its interest (although they do affect its section 704(b) capital account). Final instructions should specify that such adjustment, which generally is required pursuant to the instructions requiring a partnership to adjust a partner’s capital account for “other increases (decreases),” is not required for MLPs.

5. Statement Showing Remaining Section 743(b) Adjustment

Final instructions also should clarify that MLPs are not required to attach a statement showing each remaining section 743(b) adjustment. The October 2020 Draft Instructions, in the first bullet on page 53 under Other information (code AH), require a partnership to “[a]ttach a statement showing each remaining section 743(b) basis adjustment making up the total and identify the asset to which it relates.” The same paragraph cross references “section 743(b) positive income adjustments (code F) and section 743(b) negative income adjustments (code V), earlier.”

Presumably in recognition of the fact that publicly traded partnerships cannot separately determine the section 743(b) adjustment of partners that acquired their interests through purchase on an exchange, both of those referenced sections provide



that they apply to “partnerships other than publicly traded partnerships.”³ For the same reason, the first bullet under code AH should be revised to provide: “For partnerships other than publicly traded partnerships, attach a statement showing each remaining section 743(b) basis adjustment making up the total and identify the asset to which it relates.”

* * *

If you have any questions, please do not hesitate to contact Lori Ziebart at lori@eic.energy or 202-747-6570.

Sincerely,

A handwritten signature in black ink, appearing to read "Lori Ziebart", with a long horizontal line extending to the right.

Lori E. L. Ziebart
President & CEO
Energy Infrastructure Council

³ These instructions are consistent with the carve-outs in Notice 2019-66 for publicly traded partnerships with respect to Item N (Partner’s Share of Net Unrecognized Section 704(c) Gain or (Loss)) and the October 2020 Draft Instructions for Line 20 (Section 704(c) information (code AA)).”