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Otay Project LP, Oriole Management LLC, Tax Matters
Partner,

Petitioner

v.

Commissioner of Internal Revenue

Respondent

Electronically Filed

Docket No. 6819-20

Document No. 355

Motion for Reconsideration of Findings or Opinion Pursuant to Rule 161

UNITED STATES TAX COURT

OTAY PROJECT LP,)	
ORIOLE MANAGEMENT LLC,)	
TAX MATTERS PARTNER,)	
)	
Petitioner,)	
)	
v.)	Docket No. 6819-20
)	
COMMISSIONER OF INTERNAL)	Judge Christian N. Weiler
REVENUE,)	
)	Filed Electronically
Respondent.)	

Petitioner’s Motion for Reconsideration of Findings of Fact and Opinion

Pursuant to Rule 161 of the United States Tax Court Rules of Practice and Procedure, petitioner respectfully requests that the Court reconsider the Memorandum Findings of Fact and Opinion (T.C. Memo. 2026-21) filed in the above-captioned case on February 23, 2026 (the “*Memorandum Opinion*” or “*Mem. Op.*”).

In support thereof, petitioner states as follows:

1. At issue before the Court is respondent’s disallowance of an approximately \$714 million deduction (the “*Deduction*”) reported by Otay Project, LP (“*OPLP*”) for its tax year ended October 3, 2012. The Deduction was attributable

to a positive adjustment under section 743(b)¹ (the “**743(b) Adjustment**”) to the tax basis of OPLP’s assets with respect to Otay Project, LLC (“**OPLLC**”), that had resulted from certain transactions in 2007.

2. In the Memorandum Opinion, the Court sustained respondent’s disallowance of the Deduction.

3. Concluding that OPLLC had “negative capital,” the Court held that OPLP miscalculated the 743(b) Adjustment (the “**Negative Capital Holding**”). The Court also held that certain of the transactions before the Court lacked economic substance (the “**Economic Substance Holding**”).

4. While respondent asserted the economic substance doctrine as a basis for his disallowance of the Deduction, he did not raise the calculation issue underlying the Negative Capital Holding.

5. Petitioner respectfully disagrees with each of the Court’s holdings, both as a legal matter and with regard to numerous of the Court’s underlying findings of fact.

6. Nonetheless, petitioner recognizes the limited scope of a motion for reconsideration under this Court’s rules and precedents. Therefore, petitioner’s

¹ Unless otherwise indicated, all section references are to the Internal Revenue Code of 1986, as amended and in effect during the years at issue, and all Treasury Regulation section references are to the regulations in title 26 of the Code of Federal Regulations as in effect during the years at issue.

motion for reconsideration is focused solely on the Negative Capital Holding. While preserving all appeal rights in this matter, petitioner does not repeat here its arguments with respect to the application of the economic substance doctrine, or other issues in this case.

7. A motion for reconsideration is intended to address unusual circumstances or to correct substantial error, either of fact or law. *See, e.g., Estate of Quick v. Commissioner*, 110 T.C. 440, 441 (1998). The decision to grant a motion for reconsideration rests within the discretion of the Court. *Id.*

8. This case involves unusual circumstances, namely that the Negative Capital Holding raises issues that were never briefed by the parties. Because respondent never identified OPLLC's purported "negative capital" as a basis on which the Deduction should be disallowed, petitioner never had the opportunity to address the Negative Capital Holding and the analysis in support thereof.² Ensuring that the Court has adversarial briefing on this issue would be beneficial and an appropriate use of the reconsideration procedure. *Cf. Ctr. for Investigative Reporting v. U.S. Dep't of Just.*, 14 F.4th 916, 933 (9th Cir. 2021); *Clark v. Sweeney*, 607 U.S. 7, 9-10 (2025) (noting difficulties presented in adjudicating "a claim that

² Petitioner does not read the analysis underlying the Court's Negative Capital Holding to be the same as the argument made by respondent in his reply brief at pages 58-70. Resp't's Reply Br. 58-70, Dkt. No. 344. But even if it were, petitioner did not have the opportunity to respond to respondent's reply brief.

[one party] never asserted and that the [other party] never had the chance to address”).

9. Moreover, for the reasons set forth in petitioner’s Memorandum of Law in Support of Petitioner’s Motion for Reconsideration of Findings of Fact and Opinion filed contemporaneously herewith, the Negative Capital Holding is based on substantial errors of fact and law and results in uncertainty and confusion for other taxpayers. Accordingly, petitioner requests that the Court reconsider the findings and opinion set forth in the Memorandum Opinion with respect to the Negative Capital Holding.

10. Although not seeking reconsideration of the Economic Substance Holding in this motion, as noted above, petitioner also disagrees with such holding and its underlying analysis.³ Should the Court reconsider the Negative Capital Holding while leaving in place the Economic Substance Holding, petitioner expects

³ For example, the Court takes issue with the fact that liabilities remained with OPLP after certain assets were distributed to OPLLC. *See, e.g.*, Mem. Op. 38. As the record establishes, Al and Jim had protracted arguments about the allocation of liabilities, which ultimately were resolved in 2009 by the arbitrator. Ex. 172-J at OPLP_0001723-28. And OPLP retained substantial assets to meet its liabilities, as explained in Petitioner’s Memorandum of Law in Support of this motion. As another example, the Court concluded that “the formation and funding of the Finco entities [was] inconsistent with Al and Jim’s overall plan for division of development of land” and lacked nontax business motivations. Mem. Op. 41. Putting to the side arguments regarding this conclusion, even if such entities had not been formed, a basis adjustment would have resulted under section 734(b) from a distribution of OPLP’s notes.

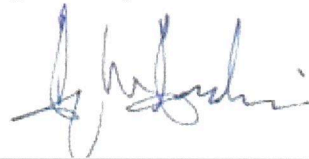
Docket No. 6819-20

that the computation of partnership items for OPLP's tax year ended October 3, 2012, under the Court's economic substance analysis, would be different than what was proposed by respondent in the Notice of Final Partnership Administrative Adjustment. Thus, if the Court were to reconsider the Negative Capital Holding, it should allow the parties the opportunity to confer, and if necessary provide briefing, regarding the applicable computations under Rule 155.

11. Respondent objects to the granting of this motion.

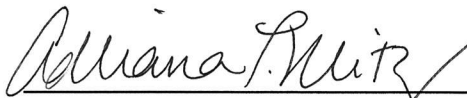
WHEREFORE, petitioner requests that the Court grant Petitioner's Motion for Reconsideration of Findings of Fact and Opinion.

Respectfully submitted,



Dated: April 24, 2026

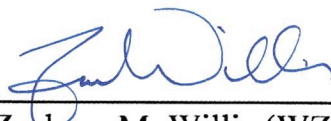
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Memorandum in Support of Motion for Reconsideration of Findings or Opinion Pursuant to Rule 161

UNITED STATES TAX COURT

OTAY PROJECT LP,)	
ORIOLE MANAGEMENT LLC,)	
TAX MATTERS PARTNER,)	
)	
Petitioner,)	
)	
v.)	Docket No. 6819-20
)	
COMMISSIONER OF INTERNAL)	Judge Christian N. Weiler
REVENUE,)	
)	Filed Electronically
Respondent.)	

**Memorandum of Law in Support of
Petitioner’s Motion for Reconsideration of Findings of Fact and Opinion**

Petitioner submits this memorandum of law in support of its motion for reconsideration of the Court’s Memorandum Findings of Fact and Opinion (the “*Memorandum Opinion*” or “*Mem. Op.*”), in which the Court held that Otay Project, LP (“*OPLP*”) miscalculated the section 743(b)¹ basis adjustment at issue in this case. According to the Court, Otay Project, LLC (“*OPLLC*”) had “negative capital” and OPLP failed to account for such “negative capital” in calculating the basis adjustment. That holding, which we refer to herein as the “*Negative Capital*

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Holding,” raises issues that the parties never briefed and is incorrect as a matter of fact and law.²

The Treasury Regulations under section 743(b) (the “**743(b) Regulations**”) set forth a formula (the “**Formula**”) for computing the amount of a section 743(b) basis adjustment. The Formula was specifically designed to achieve Congress’s overriding goal in enacting section 743(b): coordinating the transferee partner’s tax consequences and economic consequences following the transfer of a partnership interest. Respondent cannot disavow the validity of the Formula and did not attempt to do so here. The record establishes that OPLP properly applied the Formula to calculate the section 743(b) basis adjustment at issue in this case (the “**743(b) Adjustment**”) and that the Formula produced a result consistent with its overriding purpose.

Nonetheless, the Court held that OPLP miscalculated the 743(b) Adjustment because of OPLLC’s purported “negative capital.” Respectfully, that conclusion is mistaken. Consistent with the statute, the Formula specifically incorporates a transferee’s section 704(b) “book” capital, not its tax basis capital. The record is

² The Court also held that certain of the transactions before it lacked economic substance (the “**Economic Substance Holding**”). That holding is similarly incorrect as a matter of fact and law. However, for the reasons set forth in petitioner’s motion, this memorandum is focused on the Negative Capital Holding. Petitioner nonetheless reserves all appeal rights in this matter, including with respect to both the Negative Capital Holding and the Economic Substance Holding.

clear, and respondent has never disputed, that OPLLC's section 704(b) "book" capital account balance was positive. Insofar as it concluded otherwise, the Memorandum Opinion appears to be based on a misreading of certain figures contained in ambiguous charts presented by respondent on brief or a misunderstanding of certain inputs to the Formula. Moreover, the Court appears to have concluded that the Formula cannot result in a negative amount for a partner's interest in "previously taxed capital." That is also incorrect. A negative amount of previously taxed capital is neither uncommon nor prohibited by the 743(b) Regulations. In fact, it is frequently necessary to produce the result intended by section 743(b) and the regulations thereunder. In addition to adversely affecting petitioner, the Negative Capital Holding has the potential to confuse other taxpayers and raise questions about the extent to which taxpayers can rely on valid regulations. Accordingly, petitioner respectfully requests that the Court reconsider the Negative Capital Holding.

I. OPLP Properly Applied the Formula to Calculate the 743(b) Adjustment.

In calculating the 743(b) Adjustment, OPLP strictly followed the Treasury Department's specific instructions for applying the Formula where, as here, a partnership accounts for contracts using a long-term contract method of accounting, such as the completed contract method (the "*CCM*"). The resulting basis adjustment

coordinated OPLLC's tax and economic consequences consistent with the purpose of section 743(b).

A. Section 743(b) and the Regulations Thereunder Coordinate a Transferee's Tax and Economic Consequences.

Certain events—including distributions of partnership property or transfers of partnership interests—may result in disparities between a partnership's inside basis in its assets and the partners' outside bases in their partnership interests. Treas. Reg. § 1.705-2(a). Left unresolved, inside-outside basis disparities result in misalignment between the partners' tax and economic consequences. Specifically, where an inside-outside basis disparity exists, a partner would recognize a different amount of tax gain on the sale of its partnership interest than it would on the sale of the partnership's assets, even though the value of the partner's interest in the partnership would be the same in both scenarios.³

³ Consider the following example: Partner A and Partner B contribute assets to Partnership P in exchange for 50 percent economic interests therein. Partner A contributes land (Asset 2) with a fair market value of \$100 and tax basis of \$50, and Partner B contributes land (Asset 1) with a fair market value and tax basis of \$100. Partner A sells its partnership interest to new Partner C for \$100. Under section 742, Partner C's outside basis is \$100. Thus, if Partner C sold its partnership interest for \$100, it would recognize \$0 of tax gain, which is the same as its economic gain. However, if Partnership P sold all its assets (land with a total value of \$200 and basis of \$150), absent an adjustment to Partner C's share of the partnership's inside basis, Partner C would recognize \$50 of tax gain even though Partner C had no economic gain. (Partner C would step into the shoes of Partner A for purposes of allocating the pre-contribution gain in the land. Treas. Reg. § 1.704-3(a)(7).)

Congress enacted section 743(b) “in an attempt to coordinate the transferee’s tax consequences and economic consequences” on the sale or exchange of a partnership interest. 63 Fed. Reg. 4408, 4409 (Jan. 29, 1998). To do so, section 743(b) provides that a positive basis adjustment is equal to the excess of (a) the “basis to the transferee partner of his interest in the partnership” over (b) the transferee partner’s “proportionate share of the adjusted basis of the partnership property” (which “shall be determined in accordance with his interest in partnership capital”). The statute does not define either of these terms and offers no specific guidance on how to determine the amount of the basis adjustment.

However, the 743(b) Regulations—and the Formula set forth therein—describe in detail how to determine the amount of a section 743(b) basis adjustment. As described below, the Formula achieves Congress’s goal of coordinating a transferee’s tax and economic consequences by calculating a basis adjustment that equals the difference between the transferee’s gain on a sale of its partnership interest and the transferee’s gain on a sale of the partnership’s assets.

The 743(b) Regulations explain that the transferee partner’s basis in its partnership interest is determined pursuant to section 742 and the regulations thereunder. Treas. Reg. § 1.743-1(c). The transferee partner’s “share of the adjusted basis to the partnership of partnership property” equals the sum of (1) the

“transferee’s interest as a partner in the partnership’s previously taxed capital” and (2) “the transferee’s share of partnership liabilities.” Treas. Reg. § 1.743-1(d)(1).

The “transferee’s interest as a partner in the partnership’s previously taxed capital” generally equals the following amount:

- (i) The amount of cash the transferee would receive on a liquidation of the partnership following the “hypothetical transaction” defined in Treasury Regulation section 1.743-1(d)(2), *increased by*
- (ii) The tax loss allocated to the transferee from the hypothetical transaction, and *decreased by*
- (iii) The tax gain allocated to the transferee from the hypothetical transaction.

Treas. Reg. § 1.743-1(d)(1)(i)-(iii).

A key to the Formula is the “hypothetical transaction,” which is defined as the disposition by the partnership of all of its assets, immediately after the transfer of the partnership interest, in a fully taxable transaction for cash equal to the *fair market value* of the assets. Treas. Reg. § 1.743-1(d)(2). In the case of a partnership like OPLP using the CCM, the 743(b) Regulations specify that the amount of tax gain that would be recognized as a result of the hypothetical transaction includes income deferred under the CCM. *Id.*⁴ Importantly, as explained further below, the

⁴ The CCM permits sellers to defer recognizing profit on certain sales contracts for federal income tax purposes until they are complete, even though the sellers may receive payments in the interim. Treas. Reg. § 1.460-4(d); 69 Fed. Reg. 42551 (July 16, 2004). On completion of a contract (including a “constructive completion,” *e.g.*, on the sale of the contract or liquidation of the seller), the seller recognizes the previously deferred profit for tax purposes. If the seller is a partnership, it will

transferee's share of cash on liquidation is equal to the transferee's section 704(b) "book" capital account balance (and not its tax basis capital account balance) following the hypothetical transaction.

B. OPLP Correctly Applied the Formula.

Applying the Formula, OPLP determined that OPLLC's share of cash on liquidation following the hypothetical transaction would have been approximately \$107 million; OPLLC's share of OPLP's tax loss from the hypothetical transaction would have been \$0; OPLLC's share of OPLP's tax gain from the hypothetical transaction would have been approximately \$974 million; and OPLLC's share of OPLP's partnership liabilities was \$0. Pet'r's Opening Br. 291-92, Dkt. No. 328. Accordingly, OPLP determined that OPLLC's "interest as a partner in [OPLP's] previously taxed capital," and its "share of the adjusted basis to the partnership of partnership property," was approximately negative \$867 million, *i.e.*, \$107 million *minus* \$974 million. Subtracting that number from OPLLC's outside basis of \$0 (*i.e.*, \$0 *minus* negative \$867 million) results in a positive basis adjustment of \$867 million as reflected in the table below.⁵

allocate the profit among its partners. Accordingly, the 743(b) Regulations clarify that, when applying the Formula, the transferee's share of tax gain from the hypothetical transaction (which would result in a "constructive completion" of the partnership's CCM contracts) includes its share of deferred profit under the CCM. *See* Treas. Reg. §§ 1.743-1(d)(2) and 1.460-4(k)(3)(v)(B).

⁵ Petitioner introduced uncontroverted evidence to support each input to the Formula. Specifically, the record establishes that, at the time of the 743(b)

Calculation of 743(b) Adjustment Pursuant to the Formula (rounded to the nearest million)	
OPLLC's Basis in OPLP (Outside Basis)	\$ 0
<u>Less:</u> OPLLC's Share of Adjusted Basis of OPLP Property	
OPLLC's share of cash on liquidation of OPLP following hypothetical transaction	\$ 107
<u>Plus</u> OPLLC's share of tax loss from hypothetical transaction	\$ 0
<u>Minus</u> OPLLC's share of tax gain from hypothetical transaction (including deferred profit under the CCM)	\$ 974
<u>Plus</u> OPLLC's share of partnership liabilities	\$ 0
OPLLC's Share of Adjusted Basis of OPLP Property	(\$ 867)
= 743(b) Adjustment	\$ 867

OPLP's application of the 743(b) Regulations aligns with Congress's purpose in enacting section 743(b). On a sale of its interest in OPLP, OPLLC would recognize tax gain of \$107 million (*i.e.*, \$107 million amount realized *minus* \$0 outside basis). By increasing the basis of OPLP's assets with respect to OPLLC by \$867 million, the 743(b) Adjustment coordinated the amount of tax gain that would be allocated to OPLLC on a sale of OPLP's assets with the \$107 million of tax gain

Adjustment, (1) OPLLC's outside basis in OPLP was \$0, Pet'r's Opening Br. ¶ 647; (2) the fair market value of OPLP's assets was \$351 million, Pet'r's Opening Br. ¶ 648; (3) OPLP had total liabilities of \$264 million, Pet'r's Opening Br. ¶ 650; and (4) OPLP would have had tax gain of \$1 billion resulting from appreciation in its real estate assets and its deferred profit under the CCM of \$784 million, Pet'r's Opening Br. ¶ 654. (All figures approximate.) Respondent did not dispute any of these numbers other than based on certain legal positions not supported by the record in this case. Resp't's Reply Br. ¶¶ 647-50, 654, Dkt. No. 344.

that OPLLC would recognize on a sale of its interest in OPLP. Accordingly, the 743(b) Adjustment aligned OPLLC's tax and economic consequences, consistent with Congress's intent and Treasury's express purpose when it implemented the Formula.

Neither the regulations, nor the preambles to the regulations, nor any other authority prohibits a negative amount for the transferee partner's "interest as a partner in the partnership's previously taxed capital" or "share of the adjusted basis to the partnership of partnership property." Negative amounts for these outputs of the Formula are natural consequences of applying the 743(b) Regulations where the transferee's share of hypothetical gain exceeds its hypothetical liquidation proceeds, including where, as here, the transferee's tax basis capital account balance is negative after the transfer.⁶

A partnership generally maintains two sets of capital accounts for its partners. *See* Treas. Reg. § 1.704-3(c)(4) (examples 1-3). First, a partnership maintains a section 704(b) "book" capital account for each partner, which generally is maintained by reference to the fair market value of partnership assets and liabilities

⁶ The transferee partner's "interest in previously taxed capital," *i.e.*, its share of cash on liquidation following the hypothetical transaction *plus* its share of tax loss from such transaction *minus* its share of tax gain from such transaction, generally equals the transferee's tax basis capital account balance *unadjusted* for the hypothetical transaction. However, tax basis capital is not an individual input to the Formula; nor does it impact the amount of cash that a partner would receive on liquidation.

and by making upward or downward adjustments for certain items. Treas. Reg. § 1.704-1(b)(2)(iv). Second, a partnership maintains a tax basis capital account for each partner, which generally is maintained by reference to the tax basis of partnership assets and liabilities, again making adjustments for certain items. *See* Treas. Reg. §§ 1.704-3(c)(4) (examples 1-3) and 1.743-1(j)(4)(i)(C) (example 2). Thus, a partner's section 704(b) "book" capital account balance reflects its economic interest in the partnership, while a partner's tax basis capital account balance is maintained purely by use of tax basis numbers.

As discussed below, it is not uncommon for negative tax basis capital accounts to result from partnership distributions. Consider the following example, which is based on the facts contained in note 3 above prior to the transfer of the partnership interest to Partner C. More than seven years after the original contributions, Asset 1 continues to have a fair market value and tax basis of \$100, but Asset 2 has appreciated to a fair market value of \$300 and still has a tax basis of \$50. The fair market value of each partner's interest in Partnership P is \$200.

Assume that Partnership P distributes Asset 1 to Partner A at a time when Partnership P does not have a section 754 election in effect. Immediately prior to the distribution, Partnership P "books up" its assets to their fair market values and allocates the \$200 of book gain to the partners. Therefore, following the book-up but immediately prior to the distribution, Partner A's section 704(b) "book" capital

account balance is \$200, and its outside basis in its partnership interest and tax basis capital account balance are each \$50. Partner B’s section 704(b) “book” capital account balance is \$200, and its outside basis in its partnership interest and tax basis capital account balance are each \$100. Under these facts, Partnership P’s balance sheet, and the outside bases of Partner A and Partner B, would be as follows:

Pre-Distribution of Asset 1						
Assets			Liabilities and Capital			Outside Basis
	Book Value	Tax Basis		Book Value	Tax Basis	
Asset 1	\$100	\$100	Liabilities	\$0	\$0	
Asset 2	\$300	\$50	Capital			
			Partner A	\$200	\$50	\$50
			Partner B	\$200	\$100	\$100
Total	\$400	\$150	Total	\$400	\$150	\$150

Following the distribution, Partner A’s section 704(b) “book” capital account balance is \$100 (\$200 pre-distribution value *minus* \$100 value of Asset 1) and its tax basis capital account balance is negative \$50 (\$50 pre-distribution balance *minus* \$100 basis of Asset 1). Partner B’s section 704(b) “book” capital account balance remains \$200 and its tax basis capital account balance remains \$100. Partner A’s tax basis capital account is negative because the basis of the asset distributed to Partner A exceeds Partner A’s pre-distribution tax basis capital account balance.⁷

⁷ In fact, subchapter K fully anticipates that a partnership could make a non-liquidating distribution of property with a higher basis to the partnership than the tax basis of the distributee partner’s interest. *See* I.R.C. § 732(a)(2).

Under these facts, Partnership P’s balance sheet, and the outside bases of Partner A and Partner B, would be as follows:

Post-Distribution of Asset 1						
Assets			Liabilities and Capital			Outside Basis
	Book Value	Tax Basis		Book Value	Tax Basis	
Asset 2	\$300	\$50	Liabilities	\$0	\$0	
			Capital			
			Partner A	\$100	(\$50)	\$0
			Partner B	\$200	\$100	\$100
Total	\$300	\$50	Total	\$300	\$50	\$100

Furthermore, after the distribution, assume Partner A were to sell its partnership interest to new Partner C for its value of \$100 at a time when Partnership P had a section 754 election in effect. In order for the Formula to produce the intended result, Partner C’s share of previously taxed capital would *have* to be negative.⁸ Indeed, under the Formula, Partner C’s share of previously taxed capital would be equal to *negative* \$50—*i.e.*, \$100 (the cash Partner C would receive on a liquidation following the hypothetical transaction) *minus* \$150 (the amount of tax gain that would be allocated to Partner C, taking into account the rules of section 704(c), if Partnership P sold all its assets for fair market value). That would produce a section 743(b) basis adjustment for Partner C’s account of \$150, thus coordinating

⁸ As described in note 6 above, a partner’s share of previously taxed capital is typically equal to the partner’s tax basis capital account balance *unadjusted* for the hypothetical transaction.

the net amount of tax gain that would be allocated to Partner C on a sale by Partnership P of all its assets for fair market value (*i.e.*, \$0) with the tax gain that Partner C would recognize on a sale of its interest in Partnership P (*i.e.*, \$0). Accordingly, the fact that the Formula produces a negative amount for the “transferee’s interest as a partner in the partnership’s previously taxed capital” is not problematic.

In sum, OPLP calculated the 743(b) Adjustment in strict compliance with the 743(b) Regulations. Respondent is bound by his own regulations, and OPLP was entitled to rely on respondent’s regulations as written. *See Phillips Petroleum Co. v. Commissioner*, 104 T.C. 256, 301 (1995).⁹

⁹ In his reply brief, respondent stated that “OPLLC’s proportionate share of the basis of OPLP property” must be “a share of \$28,062,072” (*i.e.*, OPLP’s inside basis) and, accordingly, because OPLLC’s outside basis in OPLP is zero, “OPLLC’s section 743(b) adjustment can range from zero to negative \$28,062,072.” Resp’t’s Reply Br. 63-64. Respondent also seems to have argued that the Formula does not apply where a partnership accounts for income under the CCM, the application of which (as was the case here) can result in a partnership’s basis in its assets not being equal to the partners’ tax capital and liabilities. *See* Resp’t’s Reply Br. 62, 70. But the Formula contains no limitation based on the inside basis of the partnership’s assets, and respondent’s own Treasury Decision adopting the Formula similarly indicates no such limitation. *See* 64 Fed. Reg. 69903 (Dec. 15, 1999). And the 743(b) Regulations and the regulations under section 460 specifically address how to apply the Formula in the context of the CCM. Respondent’s misguided approach effectively asks the Court to disregard respondent’s own regulations. Respondent may not do so, and even he did not ask the Court to disallow the Deduction on that basis. Resp’t’s Reply Br. 70 n.10. Moreover, respondent’s approach would fail to “coordinate the transferee’s tax consequences and economic consequences” as Congress intended.

II. The Court's Conclusion That OPLP Miscalculated the 743(b) Adjustment Is Incorrect.

The Court did not appear to take issue with any of OPLP's inputs to the Formula other than the amount of cash OPLLC would have received in a liquidation following the hypothetical transaction because, according to the Memorandum Opinion, OPLLC had "negative capital." That is incorrect. As discussed below, consistent with the statute, one of the inputs to the Formula is the transferee's section 704(b) "book" capital account balance following the hypothetical transaction. The transferee's tax basis capital account balance, on the other hand, is not an input to the Formula. In reaching the Negative Capital Holding, the Court appears to have mistaken OPLLC's *tax basis* capital account balance for its section 704(b) "*book*" account balance, or otherwise incorrectly focused on OPLLC's tax basis capital.

A. The Formula Incorporates the Transferee's Section 704(b) "Book" Capital and Is Consistent With the Statute.

Emphasizing the provision in section 743(b) providing that a "partner's proportionate share of the adjusted basis of partnership property *shall be determined in accordance with his interest in partnership capital,*" the Court stated that it "reject[s] any computation adjusting a partner's basis in a partnership which does not fully consider that partner's capital interest in the partnership."¹⁰ Mem. Op. 27.

¹⁰ The Memorandum Opinion suggests that section 743(b) operates to increase or decrease a partner's outside basis in its partnership interest. *See* Mem. Op. 2, 27.

However, consistent with section 743(b), the Formula specifically takes into account a transferee partner's capital interest in the partnership. Thus, in applying the Formula by its terms, OPLP's calculation of the 743(b) Adjustment fully considered OPLLC's capital interest in OPLP.

As noted above, one of the inputs to the Formula is the amount of cash the transferee would receive if the partnership disposed of all its assets for fair market value and liquidated, *i.e.*, the transferee's economic interest in the partnership. Accordingly, the amount of cash the transferee would receive in this scenario depends on its hypothetical section 704(b) "book" capital account.

Indeed, the regulatory history of the 743(b) Regulations confirms that, for purposes of the Formula, the transferee partner's share of cash on liquidation following the hypothetical transaction is based on the transferee partner's section 704(b) "book" capital account balance following such transaction. *See* Prop. Treas. Reg. § 1.743-1(d)(2), 63 Fed. Reg. 4408, 4417 (Jan. 29, 1998) (restating the Formula and substituting the "transferee's capital account adjusted for the hypothetical transaction" for the transferee's share of cash on liquidation where the partnership maintains section 704(b) "book" capital accounts); 64 Fed. Reg. 69903, 69904 (Dec. 15, 1999) (noting that the sentence "relating to the correlation between a partner's

However, section 743(b) adjusts a partnership's basis in its assets with respect to the transferee partner, not the transferee partner's outside basis in its partnership interest.

interest in previously taxed capital and the partnership's capital accounts" was removed from the final regulations as "redundant" but that "no substantive change [was] intended by the deletion").

The transferee's tax basis capital account balance, on the other hand, is not a component of the Formula. *See, e.g.*, Treas. Reg. §§ 1.743-1(d)(3) (example 1) and 1.755-1(b)(5)(iv) (example 2) (demonstrating that a transferee's tax basis capital account balance is not an input to the Formula). Thus, in calculating the 743(b) Adjustment, OPLP fully accounted for OPLLC's capital interest in OPLP by properly applying the Formula and relying on OPLLC's section 704(b) "book" capital account balance following the hypothetical transaction to determine OPLLC's share of cash on liquidation.

B. OPLLC's Hypothetical Section 704(b) "Book" Capital Account Balance Was Positive.

As stated above, in calculating the 743(b) Adjustment, OPLP determined that OPLLC's share of cash on liquidation, *i.e.*, its section 704(b) "book" capital account balance, following the hypothetical transaction was approximately \$107 million. The record establishes, and respondent has never disputed, that OPLLC's section 704(b) "book" capital was positive.

Nonetheless, the Memorandum Opinion seems to suggest that, after the distribution of OPLP's interests in AB Finco, LLC and JB Finco, LLC (collectively,

the “*Finco*”) in December 2006,¹¹ OPLP had “an overall negative value of \$848 million,” Mem. Op. 30, and that OPLLC had a negative section 704(b) “book” capital account balance. Specifically, the Memorandum Opinion states that “[t]he balance sheet of OPLP, which was used to make [its section 743(b)] calculations, reflects assets of only \$28 million, liabilities of \$71 million, and a total negative capital of \$848 million. More specifically, OPLLC—the 99.9% partner in OPLP—reflects negative capital of \$911,595,423 (\$912 million).” Mem. Op. 28. The Memorandum Opinion further states that “the contortion of this balance sheet was the result of prior distributions made by OPLP. OPLLC’s negative capital balance is the result of the distribution of tax-deferred profits along with the distribution of OPLP’s interest in the Finco entities. These prior distributions of cash (or cash equivalents)¹² were ignored by petitioner when it calculated OPLLC’s section 743(b) basis adjustment.” *Id.* Respectfully, that is incorrect.

The value of OPLP’s assets exceeded its liabilities, and OPLLC’s section 704(b) “book” capital account balance was positive, both before and after the Finco Distribution. Furthermore, OPLP did not ignore any distributions in calculating the 743(b) Adjustment. Immediately before the Finco Distribution, OPLP had an overall value, and OPLLC (which at the time had a greater than 99% interest in

¹¹ We refer herein to this distribution as the “*Finco Distribution*.”

¹² The interests in the Fincos were interests in limited liability companies, not “cash” or “cash equivalents.”

OPLP) had a section 704(b) “book” capital account balance, of approximately \$1.3 billion.¹³ As a result of the Finco Distribution, OPLP’s overall value, and OPLLC’s section 704(b) “book” capital account balance, decreased by approximately \$1.2 billion.¹⁴ Thus, OPLP’s records reflected that, after the Finco Distribution, OPLLC’s section 704(b) “book” capital account balance was approximately \$107 million, which, as described above, OPLP relied on in applying the Formula.

In concluding that OPLLC had “negative capital,” the Court may have misinterpreted the following chart presented by respondent in the argument sections of his briefs:

	ASSETS	LIABILITIES & CAPITAL	
	Basis		Basis
Third-party Receivables	\$ 4,534,831	Liabilities	\$71,488,809
Notes Receivable (including interest)	\$ 6,374,467	Capital:	
Village 13	\$ 12,659,857	OPLLC	(\$911,595,423)
Planning Area 12	\$ 888,926	ORD	\$ 88,501
Village 2 Properties (including pipeline)	\$ 2,504,981	Oriole	(\$ 8,915,655)
Investment in Carmel Valley Partners	\$ 1,000,000		
Projected Community Facility District Reimbursements			
Other Assets	\$ 99,010		
CCM & PCM Contracts	\$ 0		
TOTAL	\$ 28,062,072		(\$848,933,768)

¹³ Ex. 1779-J at OPLP_0000048; *see also* Ex. 1799-J (tab: “Balance Sheets”).

¹⁴ Ex. 1779-J at OPLP_0000048; *see also* Ex. 1799-J (tab: “Balance Sheets”).

Resp't's Opening Br. 141-42, Dkt. No. 327; Resp't's Reply Br. 68. Respondent's chart, however, reflects that OPLP had assets with a *tax basis* of \$28 million, not that OPLP had total assets with a *value* of \$28 million.¹⁵ Indeed, the record establishes—and respondent did not dispute—that OPLP had assets with a value of at least approximately \$351 million (not \$28 million) at the time of the 743(b) Adjustment. Pet'r's Opening Br. ¶¶ 388, 648-49, 654; Resp't's Reply Br. ¶¶ 388, 654 (no objection).¹⁶ Moreover, respondent's chart reflects that OPLLC's *tax basis* capital account balance (not its section 704(b) "*book*" capital account balance) was negative \$911,595,423, and that the partners' aggregate *tax basis* capital account balances (not their section 704(b) "*book*" capital account balances) were negative \$848,933,768.

In his proposed findings of fact, respondent included a different version of his chart, which, as reflected below, also included columns for value:

¹⁵ *But see infra* note 17.

¹⁶ The record also establishes that OPLP had liabilities of approximately \$264 million (not \$71 million) at the time of the 743(b) Adjustment. Pet'r's Opening Br. ¶ 650.

	ASSETS		LIABILITIES & CAPITAL		
	Adjusted Basis per Books	Value		Adjusted Basis per Books	Value
Third-party Receivables	\$ 4,534,831	\$ 4,534,831	Liabilities	\$ 71,488,809	\$ 71,488,809
Notes Receivable (including interest)	\$ 6,374,467	\$ 6,374,467	Capital:		
Village 13	\$ 12,659,857	\$ 200,000,000	OPLLC	(\$911,595,423)	\$104,517,024
Planning Area 12	\$ 888,926	\$ 35,000,000	ORD	\$ 88,501	\$ 1,299,958
Village 2 Properties (including pipeline)	\$ 2,504,981	\$ 32,043,000	Oriole	(\$ 8,915,655)	\$ 9,051,944
Investment in Carmel Valley Partners	\$ 1,000,000	\$ 9,000,000			
Projected Community Facility District Reimbursements		\$ 93,330,512			
Other Assets	\$ 99,010	\$ 99,010			
<u>CCM & PCM Contracts</u>	<u>\$ 0</u>	<u>\$ 0</u>			
TOTAL	\$ 28,062,072	\$ 380,381,820		(\$848,933,768)	\$186,357,735

Resp't's Opening Br. ¶ 421.¹⁷ Thus, even respondent's chart shows that OPLP had assets with a *value* exceeding \$350 million and that OPLLC had a *positive* section 704(b) "book" capital account balance of \$104,517,024 after the Finco Distribution.

Accordingly, insofar as the Court concluded that OPLP had "an overall negative value" and/or that OPLLC had a negative section 704(b) "book" capital account balance following the Finco Distribution, those conclusions are not correct on this record. The evidence is clear: OPLP had a positive value following the Finco Distribution and OPLLC would have received a positive amount of cash on a

¹⁷ Petitioner objected to the foregoing chart on the grounds that it was vague, ambiguous, inaccurate, and incomplete. Pet'r's Answering Br. ¶ 421, Dkt. No. 343.

liquidation following the hypothetical transaction specified by the Formula. Insofar as the Court mistook OPLLC's tax basis capital account balance for its section 704(b) "book" capital account balance or otherwise relied on OPLLC's tax basis capital account balance in rejecting OPLP's calculation of the 743(b) Adjustment, the Court erred.

C. The Memorandum Opinion's Analysis Regarding OPLLC's Purported "Negative Capital" Is Mistaken.

The Court stated that it found OPLLC's purported "negative capital . . . difficult to accept" and expressed three concerns with respect to OPLLC's purported "negative capital," Mem. Op. 30-31. As explained below, the Court's concerns are easily allayed. First, the Court concluded that "while a partner's capital account can go negative, it defies logic that OPLLC's negative capital can realistically go beyond OPLP's entire balance sheet, which reflects total assets of \$28 million and liabilities of \$71 million. OPLLC's negative capital flies in the face of reality and proper tax accounting." Mem. Op. 30. As explained above, the record establishes that OPLLC's section 704(b) "book" capital account balance following the hypothetical transaction was positive and that the value of OPLP's assets—which was \$351 million, not \$28 million—exceeded its liabilities of \$264 million at the time of the 743(b) Adjustment. As far as OPLLC's tax basis capital account is concerned, tax basis capital is not an input to the Formula and does not change the calculation of the 743(b) Adjustment.

Moreover, OPLLC's negative tax basis capital account balance of approximately \$912 million did in fact reflect reality and proper tax accounting. As demonstrated above, it is not uncommon or improper for partners to have negative tax basis capital accounts.¹⁸ Indeed, the Internal Revenue Service ("*IRS*") has established a reporting regime for negative tax basis capital and has explained in relevant part that a negative tax basis capital account balance "generally exists when a partnership . . . makes distributions to a partner in excess of the partner's tax basis equity in the partnership." Form 1065 Frequently Asked Questions, Negative Tax Basis Capital Account Reporting Requirements (Dec. 11, 2019).¹⁹ That occurred here because OPLP's pre-distribution tax basis in the Finco interests was approximately \$970 million while OPLLC's pre-distribution tax basis capital account balance was approximately \$60 million.

The Court appears to take issue with the fact that OPLLC had a negative tax basis capital account balance because property received under OPLP's CCM contracts was distributed to OPLLC through the Fincos at a time when OPLLC had yet to recognize income with respect to those contracts. But Congress permits a seller who incurs long-term construction obligations to defer recognizing profit on

¹⁸ See example beginning on page 10 above.

¹⁹ A copy of the IRS's Form 1065 Frequently Asked Questions, Negative Tax Basis Capital Account Reporting Requirements is attached hereto as Attachment A. See Notice 2020-43 (referring to the prior FAQs).

the sale until the contract is complete, even where the seller receives payments in the interim, such as the notes that OPLP received from the homebuilder entities and subsequently contributed to the Fincos. *See generally* Treas. Reg. § 1.460-4(d); 69 Fed. Reg. 42551 (July 16, 2004); *cf. Shea Homes, Inc. v. Commissioner*, 142 T.C. 60, 107 (2014) (explaining that, because “costs are difficult to predict” and sellers cannot “accurately determine their profit until the development [is] nearly completed,” the CCM “reflects a deliberate choice by Congress that home construction contracts should be treated differently and accorded . . . more generous deferral”), *aff’d sub nom. Shea Homes, Inc. & Subs. v. Commissioner*, 834 F.3d 1061 (9th Cir. 2016), *nonacq.* 2017-15 I.R.B. 1072.

There is no prohibition against a selling partnership distributing property to its partners pending completion of the CCM contracts. And, contrary to the statements in the Memorandum Opinion, *see* Mem. Op. 29, the distribution of such property does not create a “liability” for OPLLC. Rather, the typical outcome of such distributions is that the distributee will have a negative tax basis capital account but not a negative section 704(b) “book” capital account. That was the case here.

Second, the Court concluded that “this negative capital is fundamentally impossible from a cash perspective, meaning it is ordinarily impossible for any partner to withdraw nearly a billion dollars in capital in excess of the amount of capital that the partner previously contributed to the partnership.” Mem. Op. 30.

That statement is incorrect. A profitable partnership may distribute to its partners more than the amount of their contributions to the partnership. Partnership profits, which may consist of unrecognized appreciation, also may be distributed.

As the Court acknowledged, Mem. Op. 11, shortly before the Finco Distribution, the assets of OPLP were revalued and the section 704(b) “book” capital accounts of OPLP’s partners were “booked up” to fair market value. After the book-up and before the Finco Distribution, OPLLC’s section 704(b) “book” capital account balance was approximately \$1.3 billion, and after the distribution, OPLLC’s section 704(b) “book” capital account balance was approximately \$107 million. Thus, there was no excess distribution. OPLLC’s *tax basis* capital account, even if negative, has nothing to do with a “cash perspective;” partnership economic entitlements are reflected by book capital, not tax basis capital.

Third, the Court concluded that “OPLLC holds an unconditional obligation to restore its negative capital account” and that “[a] correct section 743(b) adjustment must account for OPLLC’s negative capital of \$912 million and its unconditional obligation to restore this negative balance through a contribution of additional cash upon liquidation or recognition as a liability.” Mem. Op. 30-31. An obligation to restore a partner’s capital account is triggered only where a partner has a negative section 704(b) “*book*” capital account balance, not a negative *tax basis* capital account balance. *See, e.g.*, Treas. Reg. § 1.704-1(b)(5) (example 18(xii)) (where a

partner had both a negative section 704(b) “book” capital account balance and negative tax basis capital account balance, providing that the partner’s obligation was to restore the “deficit balance in his *book* capital account” if the partnership were liquidated) (emphasis added). Any purported obligation would not have been triggered because OPLLC’s section 704(b) “book” capital account balance was positive for purposes of applying the Formula.²⁰

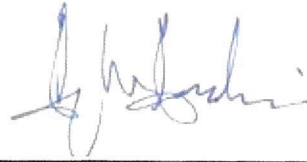
Conclusion

For the foregoing reasons, petitioner respectfully requests that the Court grant Petitioner’s Motion for Reconsideration of Findings of Fact and Opinion.

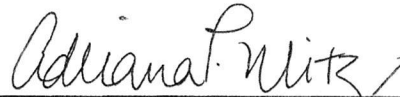
²⁰ Indeed, OPLP’s partnership agreement did not permit a deficit in OPLLC’s section 704(b) “book” capital account and, therefore, did not require OPLLC to make any further capital contributions. Ex. 5-J at OPLP_0005872.

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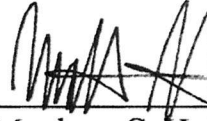
Dated: April 24, 2026



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Attachment A

Other IRS Documents (RIA)

IRSMISC1065Forms_faq

UIL No.

Headnote:

Reference(s):

FULL TEXT:

Form 1065 Frequently Asked Questions

Negative Tax Basis Capital Account Reporting Requirements

Negative "tax basis capital" generally exists when a partnership allocates tax deductions or losses or makes distributions to a partner in excess of the partner's tax basis equity in the partnership. It can also arise when a partner contributes property subject to debt in excess of the property's adjusted tax basis to a partnership.

The 2018 Instructions for Schedule K-1 (Form 1065) to Item L require that a partnership that does not report tax basis capital accounts to its partners must nevertheless report to a partner, on line 20 of Schedule K-1 using code AH, the amount of such partner's tax basis capital both at the beginning of the year and at the end of the year if either amount is negative (negative tax basis capital account information). The Instructions for Schedule K-1 (Form 8865) incorporate this requirement by reference to the Instructions for Form 1065.

Please see the FAQs with responses and examples, below, for more detail, including a safe harbor approach for calculating partners' tax basis capital accounts.

Use tab to go to the next focusable element

1. What is a partner's tax basis capital account?

A partner's tax basis capital account (sometimes referred to simply as "tax capital") represents its equity as calculated using tax principles, not based on GAAP, § 704(b), or other principles.

2. How do partnerships calculate a partner's tax basis capital account?



(A) In general, a partner's tax basis capital account is equal to the amount of money contributed by the partner to the partnership, increased by"

(i) The adjusted tax basis of non-cash property contributed by the partner to the partnership, less the liabilities assumed by the partnership (or to which the property is subject) in connection with the contribution;

(ii) The sum of the partner's distributive share for the taxable year and prior taxable years of partnership income or gain (including tax-exempt income);

(iii) The partner's distributive share of the excess of the tax deductions for depletion (other than oil and gas depletion) over the tax basis of the property subject to depletion;

(iv) The amount of liabilities of the partnership assumed by the partner, excluding liabilities described in (B)(ii); and

(v) The partner's distributive share of any increase to the tax basis of partnership property under  § 734(b) or with respect to partnership property under  § 743(b).

(B) In general, a partner's tax basis capital account is decreased by"

(i) Distributions of money to the partner;



(ii) The adjusted tax basis of property distributed to the partner from the partnership, less the liabilities assumed by the partner (or to which the property is subject) in connection with the distribution;

(iii) The sum of the partner's distributive share for the taxable year and prior taxable years of partnership losses and deductions (including expenditures which are not deductible in computing partnership taxable income and which are not capital expenditures);

(iv) The partner's distributive share of the tax deductions for depletion of any partnership oil and gas property, not to exceed the partner's share of the adjusted tax basis of that property;

(v) The partner's distributive share of the adjusted tax basis of charitable property contributions and foreign taxes paid or accrued;

(vi) The amount of the partner's individual liabilities that are assumed by the partnership, excluding liabilities described in (A)(i); and

(vii) The partner's distributive share of any decrease to the tax basis of partnership property under  § 734(b) or with respect to partnership property under  § 743(b).


Example 1: A contributes \$100 in cash and B contributes unencumbered, nondepreciable property with a fair market value (FMV) of \$100 and an adjusted tax basis of \$30 to newly formed Partnership AB. A's initial tax basis capital account is \$100 and B's initial tax basis capital account is \$30.





Example 2: The facts are the same as in Example 1, except B contributes nondepreciable property with a FMV of \$100, an adjusted tax basis of \$30, and subject to a liability of \$20. B's initial tax basis capital account is \$10 (\$30 adjusted tax basis of property contributed, less the \$20 liability to which the property was subject).


Example 3: The facts are the same as in Example 1, except in Year 1, the partnership earns \$100 of taxable income and \$50 of tax-exempt income. A and B are each allocated \$50 of the taxable income and \$25 of the tax-exempt income by the partnership. At the end of Year 1, A's tax basis capital account is increased by \$75, to \$175, and B's tax basis capital account is increased by \$75, to \$105.

Example 4: The facts are the same as in Example 3. Additionally, in Year 2, the partnership has \$30 of taxable loss and \$20 of expenditures which are not deductible in computing partnership taxable income and which are not capital expenditures. A and B are each allocated \$15 of the taxable loss and \$10 of the expenditures which are not deductible in computing partnership taxable income and which are not capital expenditures. At the end of Year 2, A's tax basis capital account is decreased by \$25, to \$150, and B's tax basis capital account is decreased by \$25, to \$80.


3. How can a partner's tax basis capital account be negative when the tax basis of its interest in the partnership (outside basis) is zero or positive?

A partner's tax basis capital account can be negative when its outside basis is zero or positive because outside basis is increased by the partner's share of partnership liabilities under  § 752 and the partner's tax basis capital account is not. A partner's tax basis capital account can be negative if a partnership allocates tax losses or deductions or make distributions to the partner in excess of the partner's tax basis equity in the partnership, or when a partner contributes property subject to debt in excess of its adjusted tax basis to a partnership.




Example 5: On January 1, 2019, A and B each contribute \$100 in cash to a newly formed partnership. On the same day, the partnership borrows \$800 and purchases Asset X, qualified property for purposes of  § 168(k), for \$1,000. Assume that the partnership properly allocates the \$800 liability equally to A and B under  § 752. Immediately after the partnership acquires Asset X, both A and B have tax basis capital accounts of \$100 and outside bases of \$500 (\$100 cash contributed, plus \$400 share of partnership liabilities under  § 752). In 2019, the partnership recognizes \$1,000 of tax depreciation under  § 168(k) with respect to Asset X; the partnership allocates \$500 of the tax depreciation to A and \$500 of the tax depreciation to B. On December 31, 2019, A and B both have tax basis capital accounts of negative \$400 (\$100 cash contributed, less \$500 share of tax depreciation) and outside

bases of zero (\$100 cash contributed, plus \$400 share of partnership liabilities under  § 752, and less \$500 of share tax depreciation).



4. Do revaluations of partnership property affect a partner's tax basis capital account?

No. Revaluations of partnership property pursuant to  § 704 and the regulations thereunder do not affect the tax basis of partnership property or a partner's tax basis capital account.

5. What is the tax capital account of a partner who acquired its partnership interest by transfer from another partner?

A partner that acquired its partnership interest by transfer from another partner, for example, by purchase or in a non-recognition transaction, has a tax capital account immediately after the transfer equal to the transferring partner's tax capital account immediately before the transfer with respect to the portion of the interest transferred, except no portion of any  § 743(b) basis adjustment the transferring partner may have is transferred to the partner acquiring the interest as part of the transaction. If the partnership has a  § 754 election in effect, the partnership increases or decreases the tax capital account acquired by the transferee partner by an amount equal to the positive or negative adjustment to the tax basis of partnership property under  § 743(b) as a result of the transfer.

6. Is there a safe harbor approach for determining whether a partnership has an obligation to report negative tax basis capital account information?

Yes. Partnerships may calculate a partner's tax basis capital account by subtracting the partner's share of partnership liabilities under  § 752 from the partner's outside basis (safe harbor approach). If a partnership elects to use the safe harbor approach, the partnership must report the negative tax basis capital account information as equal to the excess, if any, of the partner's share of partnership liabilities under  § 752 over the partner's outside basis.

7. Must partnerships that satisfy all four of the conditions provided in question 4 on Schedule B to the Form 1065 comply with the requirement to report negative tax basis capital account information?

No. A partnership that satisfies all four of the conditions provided in question 4 on Schedule B to the Form 1065 (and also listed below) does not have to comply with the requirement to report negative tax basis capital account information because the partnership is not required to complete item L on the Schedule K-1. The four conditions are:


- a. The partnership's total receipts for the tax year were less than \$250,000;
- b. The partnership's total assets at the end of the tax year were less than \$1 million;
- c. Schedules K-1 are filed with the return and furnished to the partners on or before the due date

(including extensions) for the partnership return; and

d. The partnership is not filing and is not required to file Schedule M-3.

8. What is the procedure for complying with the requirement to report negative tax basis capital account information for tax year 2018?


Note: Except with respect to information in (2)(d)(iii) that may be required on the 2019 Schedule K-1, the following applies for the 2018 taxable year only.

 Notice 2019-20, Penalty Relief for Missing Negative Tax Basis Capital Account Information, provides additional information and penalty relief for complying with the requirement to report negative tax basis capital account information for tax year 2018 if the following conditions are met:

The Schedule K-1 or other applicable form or statement is timely filed, including extensions, with the IRS; is timely furnished to the appropriate partner, if applicable; and contains all other required information. The person or partnership required to file the Schedule K-1 or other applicable form or statement files with the IRS, no later than one year after the original, unextended due date of the form to which the Schedule K-1 or other applicable form or statement must be attached, a schedule setting forth:

- a. A statement that the schedule is "Filed Under Notice 2019-20"
- b. The Schedules K-1 or other applicable forms or statements for which the schedule is filed, e.g., Schedule K-1 (Form 1065) or Schedule K-1 (Form 8865);
- c. The partnership's name and Employer Identification Number, if any, and Reference ID Number, if any;
- d. For each partner for which negative tax basis capital account information is required-
 - i. The partners name, address, and taxpayer identification number; and
 - ii. The amount of the partner's tax basis capital account at the beginning and end of the tax year at issue.

With respect to the condition (2)(d)(ii), directly above, if the person or partnership required to file the Schedule K-1 or other applicable forms or statements elects to use the safe harbor approach for certain partners, the schedule must set forth for each partner for which negative tax basis capital account information is required:

- iii. The amount of the partner's outside basis, share of partnership liabilities under  § 752, and tax basis capital account under the safe harbor approach at the beginning and end of the tax year at issue.

The schedule should be sent to the following address: 1973 North Rulon White Blvd.

Ogden, UT 84404-7843

MS 4700

Attn: Ogden PTE

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