

## 1065X Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

### Purpose of Form

Use Form 1065X, Amended Return or Administrative Adjustment Request (AAR), to:

- Amend a previously filed Form 1065, Form 1065-B, or Form 1066 or
- Make an Administrative Adjustment Request (AAR) for a previously filed Form 1065, Form 1065-B, or Form 1066.

For the purposes of these instructions, the term “partnership” includes entities which file Form 1065, Form 1065-B, or Form 1066.

### Who Must File

**Amended return.** Partnerships and Real Estate Mortgage Investment Conduits (REMICs) that become aware of changes they need to make to income, deductions, etc., use Form 1065X to amend their previously filed partnership or REMIC return. See *Specific Instructions*, later, for information on completing Form 1065X as an amended return.

**AAR-Partnerships (except electing large partnerships).** Partnerships that are subject to the consolidated audit proceedings of sections 6221 through 6234 use Form 1065X to file for an AAR. See *Specific Instructions*, later, for information on completing Form 1065X as an AAR.

**AAR-Electing Large Partnerships (ELP).** ELPs that need to correct errors on a previously filed Form 1065-B use Form 1065X to file for an AAR. See *Specific Instructions*, later, for information on completing Form 1065X as an AAR.

**AAR-REMICs.** REMICs that do not meet the small REMIC exception under sections 860F (e) and 6231, and related regulations, or make the election described in section 6231(a)(1)(B)(ii) not to be treated as a small REMIC, use Form 1065X to file for an AAR. See *Specific Instructions*, later, for information on completing Form 1065X as an AAR.

<Tip Icon> *When a partnership or REMIC’s federal return is changed for any reason, it may affect its state return. For more information, contact the state tax agency to which the state return is filed.*

## **Electronic Filing (Partnerships and ELPs ONLY)**

Generally, partnerships with more than 100 partners, or partnerships that are ELPs, are required to file Form 1065 or 1065-B electronically. These partnerships will file Form 1065X as an attachment to Form 1065 or Form 1065-B, and will check the “Amended Return” checkbox on Form 1065 or 1065-B.

If the partnership was not required to file the original return electronically, then Form 1065X can be filed as a stand-alone document.

### **For More Information on Filing Electronically**

- Call the Electronic Filing Section at the Ogden Service Center at 1-866-255-0654 or
- Visit [www.irs.gov/efile](http://www.irs.gov/efile) .

### **When To File**

Generally, a partnership or REMIC may file an amended return to change items from a pass-through entity for any tax year of that entity at any time that is:

1. Within 3 years after the later of:
  - The date on which the partnership return for that year is filed or
  - The last day for filing the partnership return for that year (excluding extensions); and
2. Before a notice of final pass-through administrative adjustment for that year is mailed to the TMP (in the case of TEFRA partnership or REMIC subject to TEFRA procedures) or before the mailing to the partnership a notice of partnership adjustment with respect to that year (in the case of an ELP).

In the case of a partnership or a REMIC that is not subject to the TEFRA procedures, in addition to the partnership or REMIC filing a Form 1065X, each partner of that partnership or residual interest holder of a REMIC will need to file their own amended return.

### **Where To File**

Form 1065X must be filed with the service center where the original return was filed.

### **What To Attach**

If the corrected amount involves an item of income, deduction, or credit that must be supported with a schedule, statement, or form, attach the appropriate schedule, statement, or form to Form 1065X. Include the entity’s name and employer identification number (EIN) on any attachments.

In addition, if the electing large partnership or REMIC requests that the IRS electronically deposit a refund of \$1 million or more, attach Form 8302, Electronic Deposit of Tax Refund of \$1 Million or More.

## **Who Must Sign**

**Partnerships.** One general partner or Limited Liability Company (LLC) member manager must sign the return. For a partnership, Form 1065X is not considered to be a return unless it is signed. When a return is made for a partnership by a receiver, trustee, or assignee, the fiduciary must sign the return instead of the general partner or LLC member manager. Returns and forms signed by a receiver or trustee in bankruptcy on behalf of a partnership must be accompanied by a copy of the order or instructions of the court authorizing the signing of the return or form.

**REMICs with a startup day after November 9, 1988.** For these REMICs, Form 1065X may be signed by any person who could sign the return of the entity in the absence of the REMIC election. Thus, the return of a REMIC that is a corporation or trust would be signed by a corporate officer or a trustee, respectively. For REMICs with only segregated pools of assets, the return would be signed by any person who could sign the return of the entity owning the assets of the REMIC under applicable state law.

**REMICs with a startup day before November 10, 1988.** These REMICs may elect to apply the rules for REMICs with a startup day after November 9, 1988 (as described in Regulations section 1.860F-4(c)(2)(iii)). Otherwise, Form 1066 must be signed by a residual interest holder or, as provided in section 6903, by a fiduciary as defined in section 7701(a)(6) who is acting for the REMIC and who has furnished adequate notice as described in Regulations section 301.6903-1(b).

In the prior paragraph, the term “startup day” means any day selected by a REMIC that is on or before the first day on which interests in such REMIC are issued. Otherwise, “startup day” is the day on which the REMIC issued all of its regular and residual interests. However, a sponsor may contribute property to a REMIC in exchange for regular and residual interests over any period of 10 consecutive days and the REMIC may designate any one of those 10 days as the startup day. The day so designated is then the startup day, and all interests are treated as issued on that day.

## **Paid Preparer’s Information**

If a partner or an employee of the partnership or REMIC completes Form 1065X, the “Paid Preparer Use Only” space should remain blank. In addition, anyone who prepares Form 1065X but does not charge the partnership or REMIC should not complete this section.

Generally, anyone who is paid to prepare the partnership return must do the following.

- Sign the return in the space provided for the preparer's signature.
- Fill in the other blanks in the "Paid Preparer Use Only" area of the return. A paid preparer cannot use a social security number in the "Paid Preparer Use Only" box. The paid preparer must use a preparer tax identification number (PTIN).
- Give the partnership a copy of the return in addition to the copy to be filed with the IRS.

**Note.** A paid preparer may sign original or amended returns by rubber stamp, mechanical device, or computer software program.

### **Interest and Penalties**

**Interest.** Interest is charged on taxes not paid by the due date, even if an extension of time to file is granted. Interest is also charged on penalties imposed for negligence, fraud, substantial valuation misstatements, substantial understatements of tax, and reportable transaction understatements. The interest is charged from the due date (including extensions) to the date of payment. The interest charge is figured at a rate determined under section 6621.

**Late payment penalty.** The penalty for not paying the tax when due is usually  $\frac{1}{2}$  of 1% of the unpaid tax for each month or part of a month that the tax remains unpaid. The penalty cannot exceed 25% of the unpaid tax. The penalty will not be charged if you can show reasonable cause for not paying on time.

**Other penalties.** Penalties can also be imposed for negligence, substantial understatements of tax, reportable transaction understatements, and fraud. See sections 6662, 6662A, and 6663.

### **Protective AARs**

Generally, a protective AAR is a request for credit or refund based on current litigation or expected changes in tax law or other legislation. You file a protective AAR when your right to a refund is contingent on future events and may not be determinable until after the partnership's section 6229 statute of limitations expires. Protective AARs are subject to AAR statutes set forth in sections 6227, 6228, and 6229. The petition period described in section 6228 can be extended by using Form 9248, Agreement to Extend the Time to File a Petition for Adjustment by the Tax Matters Partner With Respect to Partnership Items, if you are a TMP filing on behalf of the partnership. If you are a NonTEFRA partnership filing an AAR for corrections to TEFRA flow through items, you can extend the petition period by using Form 9247, Agreement to Extend the Time to File a Civil Action for Refund by Partner With Respect to Partner's Partnership Items.

A protective AAR must clearly state that is a protective AAR and alert the IRS to the essential nature of the adjustment and specify the line item to be protected.

### **Judicial Review of an AAR (For Returns Subject to the TEFRA Procedures or ELPs)**

If the IRS fails to act on an AAR, you may file a petition for judicial review with the United States Tax Court, United States Court of Federal Claims, or United States District Court. You must file the petition before the date that is 2 years after the date you filed the AAR, but not until after the date that is 6 months from the date of such filing. The 2-year period may be extended if the IRS and you agree in writing. For more details, see Internal Revenue Code sections 6228 and 6252.

### **Specific Instructions**

#### **TEFRA/NonTEFRA Determination (Items A through I)**

##### **Definitions**

**Tax matters partner.** If the partnership is subject to the TEFRA procedures, it can designate a partner as the tax matters partner (TMP) for the tax year for which the return is filed by completing the *Designation of Tax Matters Partner* section on page 3 of Form 1065. The designated TMP must be a general partner and, in most cases, also must be a U.S. person.

Additionally, a REMIC may designate a tax matters person in the same manner in which a partnership may designate a tax matters partner. For purposes of applying the tax matter partner rules, all holders of a residual interest in the REMIC are treated as general partners. The designation may be made by completing the Designation of Tax Matters Person section on Form 1066, page 4. For details, see section 301.6231(a)(7)-1.

For a limited liability company (LLC), only a member manager of the LLC is treated as a general partner. A member manager is any owner of an interest in the LLC who, alone or together with others, has continuing exclusive authority to make the management decisions necessary to **conduct** the business for which the LLC was formed. If there are no elected or designated member managers, each owner is treated as a member manager. For details, see Regulations section 301.6231(a)(7)-2.

**Partner with authority (PWA).** Each electing large partnership must designate a partner (or other person) who shall have the sole authority to act on behalf of the partnership. See Internal Revenue Code section 775(b). If the partnership fails to designate a partner with authority, the IRS can select any partner to serve as the partner with such authority. The PWA has the authority to file an

administrative adjustment request on behalf of the partnership. The PWA does this by filing Form 1065X.

### **Item A**

If a partnership otherwise qualifies, a partnership can choose to be an electing large partnership (ELP) by filing Form 1065-B instead of Form 1065. The election applies to the tax year for which it was made and for all later tax years. This election cannot be revoked without IRS consent. For further information on ELP election and qualifications, see the 1065-B instructions.

If the amendment is related to an ELP, then the partnership return is not subject to the TEFRA proceedings. You should proceed to item E and check the “Not subject to TEFRA” box.

### **Items B through E**

These items are used to determine if the partnership is subject to the rules for consolidated audit proceedings (TEFRA proceedings).

**Consolidated REMIC proceedings.** Generally, the tax treatment of REMIC items is determined at the REMIC level in a consolidated REMIC proceeding, rather than in separate proceedings with individual residual interest holders. A REMIC subject to consolidated REMIC proceedings will have checked the box on line G on its original Form 1066.

### **Items B and C**

All partnerships (except ELPs) and REMICS **ARE** subject to TEFRA partnership audit procedures unless the partnership or REMIC is subject to the small partnership procedures. See Internal Revenue Code Section 6231(a)(1)(B).

A small partnership is a partnership with 10 or fewer partners. All partners must be U.S. individuals and their estates, resident alien individuals, or C corporations. If both these conditions are met, check the “Yes” box for Item B and Item C.

**Note.** For making the small partnership determination, a husband and wife each having their own partnership interest are considered one partner. An individual who has passed away during the year and their estate are considered one partner.

### **Item D**

A partnership defined as a small partnership can elect to be treated as a TEFRA partnership. The taxpayer elects TEFRA treatment by attaching a statement to the tax return for the first year they wish the election to be effective. This statement must be signed by all partners. See Regulations 301.6231(a)(1)-1(b).

Form 8893, Election of Partnership Level Tax Treatment, is the statement that can be used to make this election. If you answer 'Yes' to Item D, also provide the tax year of the filing of this election in the space provided.

### **Item E**

If at any time during the taxable year there are more than 10 partners or any of the following are partners in the partnership, then the partnership is not a small partnership.

- Another partnership.
- A Limited liability Company (LLC) which files as a partnership or is treated as a disregarded entity.
- Any type of trust, including a grantor trust.
- A nominee.
- A nonresident alien.
- An S corporation.

If you answered 'No' to either item B or item C, or 'Yes' to item D, check the "Subject to TEFRA" box. Check the "Not Subject to TEFRA" box if you answered 'Yes' to item B and item C and 'No' to item D.

### **Item F**

Check the box to indicate whether you are filing an amended return or an AAR.

**Amended Return.** Check this box if you checked the "Not subject to TEFRA" box in item E. This means that you are filing a request to correct a previously filed NonTEFRA partnership return or Form 1066 and your adjustments do not originate from a return subject to the TEFRA partnership rules. For additional rules regarding REMICs, see *Consolidated Audit Rules for a REMIC*, later.

If your partnership or REMIC return meets the exception under 860F(e) or Section 6231, and does not file an election to be treated as a TEFRA partnership under 6231(a)(1)(B)(II), and you received a corrected Form 1099 or are making changes to income, deductions, or credits but there are no flow through changes from a TEFRA partnership, then you are filing an amended return. Check the "Amended Return" box.

However, if the adjustments to the NonTEFRA partnership or REMIC originate from a TEFRA partnership or REMIC, it is considered a partner AAR.

**Administrative Adjustment Request (AAR).** Check this box if you are filing a request to correct a previously filed partnership or REMIC return and you are one of the following.

- The TMP of the TEFRA partnership or REMIC. The REMIC must be subject to the consolidated audit procedures described below.
- A partner (other than a partner in an ELP) changing TEFRA pass through items on your partnership return.
- A residual interest holder changing REMIC pass through items on your partnership return. If you are a residual interest holder, the REMIC return must be subject to the consolidated audit procedures described below.
- An ELP correcting a previously filed return.

The TMP for a TEFRA partnership is a general partner or member-manager designated by the partnership to represent the partnership in consolidated audit and litigation proceedings under sections 6221 through 6234.

A REMIC may designate a TMP in the same manner that a partnership may designate a tax matters partner under Regulations section 301.6231(a)(7)-1. When applying that section, treat all holders of a residual interest in the REMIC as general partners. The designation may be made in the “Designation of Tax Matters Person” on page 4 of Form 1066.

### **Consolidated Audit Procedures for a REMIC**

If a REMIC does not meet the small REMIC exception under sections 860F(e) and 6231 and related regulations, or makes the election described in section 6231(a)(1)(B)(ii) not to be treated as a small REMIC, the amended return will be a request for administrative adjustment filed by the tax matters person. See sections 860F(e) and 6227 for more information.

Generally, the tax treatment of REMIC items is determined at the REMIC level in a consolidated REMIC proceeding, rather than in separate proceedings with individual residual interest holders. Like a TEFRA partnership, the REMIC must have:

- More than 10 residual interest holders at any time during the tax year (a husband and wife count as one holder),
- Any residual interest holder be a nonresident alien, or was other than an individual, a C corporation, or an estate, unless there was at no time during the tax year more than one holder of the residual interest, and
- Filed an election to be subject to the rules for consolidated REMIC proceedings.

“Small REMICs,” as defined in sections 860F(e), 6231(a)(1)(B), and the regulations of both, are not subject to the rules for consolidated REMIC proceedings, but may make an election to be covered by them. This election can be revoked only with the consent of the Commissioner.



## Item G

A substituted return is an amended return in which the Tax Matters Partner requests that the treatment of an item shown on the Administrative Adjustment Request be substituted for the treatment of the item on the pass-through entity's return. If the IRS allows substituted return treatment, the changes shown on the amended return will be treated as corrections of mathematical or clerical errors, and the IRS may credit or refund any overpayment of tax to the partners or residual interest holders based on the amended return or assess any resulting tax without a deficiency or entity level proceeding. See IRC 6227(c)(1).

If the request is not treated as a substituted return, the IRS may credit or refund any overpayment of tax to the partners or residual interest holders per the request, conduct an examination of the pass-through entity's return, or take no action on the request. When a request is not treated as a substituted return, the IRS cannot assess tax without a deficiency or entity level proceeding. See section 6227(c)(2).

If the amendment applies to an ELP, you should not check either box. An ELP cannot request substituted treatment. See section 6251(b).

## Part I – Amended or Administrative Adjustment Request (AAR) Items for Partnerships Filing Form 1065 Only

For information on income, deductions, credits, etc., see the Instructions for Form 1065, Schedules K and K-1, for the tax year being amended or otherwise adjusted. If the corrected or otherwise adjusted amount involves an item that must be supported with a schedule, statement, or form, attach the appropriate schedule, statement, or form to Form 1065X. Include the partnership's name and EIN on any attachments. See the Instructions for Form 1065 for a list of forms that may be required.

If you are a partnership subject to the consolidated audit proceedings for TEFRA, the IRS will process the Form 1065X following the guidelines set forth in sections 6227(c)(1), 6227(c)(2) and 6227(d).

**Column (a).** Enter the amounts from Schedule K of Form 1065 as originally filed or as was later amended. If the return was changed or audited by the IRS, enter the amounts as adjusted.

**Column (b).** Enter the net increase or decrease for each line being changed. Use parentheses around all amounts that are decreases. Explain the increase or decrease in Part III.

## **Amended Schedules K-1**

File amended Schedules K-1 with Form 1065X and furnish copies of the amended Schedules K-1 to the partners. If the partnership is filing Form 1065X for an AAR, inform the partners receiving the amended Schedules K-1 that the partnership is filing the AAR. If the partnership is not subject to the rules for consolidated audit proceedings (TEFRA proceedings) under sections 6221 through 6234, the partnership cannot file an AAR and instead must furnish the amended Schedules K-1 to its partners. The partners must then file their own amended returns.

## **Part II-Amended or Administrative Adjustment Requests (AAR) Items for ELPs and REMICs Only**

### **Electing Large Partnerships**

An electing large partnership may file an AAR to adjust its partnership items. Generally, the electing large partnership has two choices for handling the adjustment.

1. It may combine the adjustment with the same partnership item for the year in which the IRS allows the adjustment and pass it through to the current partners for that year. However, if the adjustment involves the reduction in a credit which exceed the amount of that credit for the partnership tax year in which the adjustment is allowed, the partnership must pay tax in an amount equal to the excess amount.
2. It may elect not to pass the adjustment through to current partners by paying tax on any imputed underpayment that results from the adjustment. See section 6242(b)(4).

In either case, the partnership is liable for any interest and penalties on imputed underpayments that results from the adjustment. See section 6242(b) for details. Interest is figured on the imputed underpayment for the period beginning on the day after the due date (excluding extensions) of the partnership return for the tax year the adjustment takes effect, or, if earlier, the date the partnership paid the tax due under 2 above. The adjusted year is the partnership tax year in which the item being adjusted arose.

**How to complete.** Identify in Part II of Form 1065X the amount and treatment of any item the partnership is changing from the way it was reported on the original return. If the corrected amount involves an item of income, deduction, or credit that must be supported with a schedule, statement, or form, attach the appropriate schedule, statement, or form to Form 1065X. Include the partnership's name and employer identification number on any attachments.

If the partnership elects to pay the tax, enter it on Part II, line 16. Attach a computation of the tax to Form 1065X. The IRS will bill the partnership for any interest and penalties it owes.

If the income, deductions, credits, or other information provided to any partner on Schedule K-1 are incorrect in the partner's distributive share of any partnership item shown on Form 1065-B, file an amended Schedule K-1 (Form 1065-B) showing the correct for that partner with Form 1065X. Also provide the partner a copy of the amended Schedule K-1.

### **Amended Schedules K-1 or Schedules Q**

If the ELP or REMIC is filing Form 1065X for an AAR, do not furnish the amended Schedules K-1 or Schedules Q to the partners or residual interest holders. If the REMIC is not filing for an AAR and is not subject to the rules for consolidated audit proceedings under sections 6221 through 6231, the REMIC must furnish the amended Schedules Q to its residual interest holders.

### **Part III – Explanation of Changes to Items in Part I and Part II**

For each amended item, explain in detail the reasons for the change. Include any computations necessary to support the amended item.

#### **What to attach**

If the corrected amount involves an item of income, deduction, or credit that must be supported with a schedule, statement, or form, attach the appropriate schedule, statement, or form to Form 1065X. Include the pass-through entity's name and employer identification number on any attachments. See the instructions for Form 1065, 1065-B, or 1066 (as applicable) for a list of forms that may be required.

If the attachments needed to support the corrected amount include copies of forms or schedules from previously filed tax returns, write at the top of each previously filed form or schedule, "Copy Only—Do Not Process."