

Instructions for Form 8082

(Rev. December 2011)

Notice of Inconsistent Treatment or Administrative Adjustment Request (AAR)



Department of the Treasury
Internal Revenue Service

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

What's New

1. Form 8082 will no longer be used by REMICs to amend their returns or to make administrative adjustment requests. Instead, REMICs will now use new Form 1065X, Amended Return or Administrative Adjustment Request (AAR). See Form 1065X and its instructions for more information.

2. Partnerships not electronically filing an amended return or making an administrative adjustment request will no longer use Form 8082 to amend their returns or make administrative adjustment requests. Instead, these partnerships will now use new Form 1065X. See Form 1065X and its instructions for more information.

3. Partnerships electronically filing an amended return or making an administrative adjustment request will continue to use Form 8082.

4. A tax shelter registration number no longer has to be entered on Form 8082.

5. The IRS has created a page on IRS.gov for information about Form 8082 and its instructions at www.irs.gov/form8082. Information about any future developments affecting Form 8082 (such as legislation enacted after we release it) will be posted on that page.

General Instructions

Purpose of Form

Notice of inconsistent treatment. If you are a partner, S corporation shareholder, beneficiary of an estate or trust, owner of a foreign trust, or residual interest holder in a real estate mortgage investment conduit (REMIC), you generally must report items consistent with the way they were reported to you on Schedule K-1, Schedule Q, or a foreign trust statement. However, there may be reasons why you wish to report these items differently. Use Form 8082 for this purpose.

Use Form 8082 to notify the IRS of any inconsistency between your tax treatment of an item and the way the pass-through entity treated and reported the same item on its return. Also use the form to notify the IRS if you did not receive Schedule K-1, Schedule Q, or a foreign trust statement from the foreign trust by the due date for filing your return (including extensions). However, do not file Form 8082 as a partner in an electing large

partnership. Instead you must report all partnership items in a manner consistent with the way the partnership reported them on Schedule K-1 (Form 1065-B).

Administrative adjustment request (AAR). Form 8082 is also used as an administrative adjustment request to correct a previously filed return. An AAR is:

1. A request by the tax matters partner (TMP) to correct items on the original partnership return.
2. A request by a partner (other than a partner in an electing large partnership), or residual interest holder to correct pass-through items on that person's income tax return.
3. A request by an electing large partnership to correct items on the original partnership return.

Definitions

Pass-through entity. A partnership (including an electing large partnership), S corporation, estate, trust, or REMIC.

Item. Any item of a partnership, S corporation, estate, trust, or REMIC required to be taken into account for the pass-through entity's tax year by the partners, shareholders, beneficiaries, owners, or residual interest holders of that pass-through entity.

Tax matters partner (TMP). A tax matters partner 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. See the Instructions for Form 1065 for more information.

Schedule K-1. An annual schedule reporting the partner's, shareholder's, or beneficiary's share of income, deductions, credits, etc., from a partnership, S corporation, estate, or domestic trust.

Schedule Q. A quarterly schedule reporting the residual interest holder's share of taxable income or net loss from the REMIC.

Foreign trust statement. Any of the following annual statements furnished by a foreign trust to its owners or beneficiaries:

- Foreign Grantor Trust Owner Statement,
- Foreign Grantor Trust Beneficiary Statement, or
- Foreign Nongrantor Trust Beneficiary Statement.

Who Must File

Notice of inconsistent treatment. Generally, file Form 8082 if:

1. You believe an item was not properly reported on the Schedule K-1 you received from the partnership, S corporation, estate, or domestic trust, the Schedule Q you received from the REMIC, or the foreign trust statement you received from the foreign trust.

The same is true if you believe an item shown on your schedule or statement is incorrect but it is not an item that otherwise has to be reported on your tax return. For example, if you believe that the percentage shown as your ownership of capital at the end of the year was not properly reflected on Schedule K-1, file Form 8082 to report this, even though you are not otherwise required to report that percentage on your tax return. If you discover this kind of inconsistency after filing your original return, file an amended return to report it. In the space provided on the amended return for writing explanations, enter "See attached Form 8082." If the correction does not affect your tax return, no amounts need to be entered on the amended return if the Form 8082 item is the only reason for filing the amended return.

2. The pass-through entity has not filed a tax return or given you a Schedule K-1, Schedule Q, or foreign trust statement by the time you are required to file your tax return (including extensions), and there are items you must include on your return.

Caution. If you do not notify the IRS that you are reporting an item (Part I, line 1, box a) inconsistently, any deficiency (including any late filing or late payment penalties applicable to the deficiency) that results from a computational adjustment to make your amount or treatment of the item consistent with the amount or treatment of the item on the pass-through entity's return may be assessed immediately. An inconsistent item can exist on either your original or amended return.

AAR. File Form 8082 if:

1. You are requesting an administrative adjustment to correct a previously filed partnership return. S corporations, estates, and trusts cannot file an AAR (see items 4 and 5 under *Who May Not File* for details).

2. You are a partner (other than a partner in an electing large partnership) or residual interest holder in a REMIC

requesting an administrative adjustment to correct pass-through items on your income tax return.

Who May Not File

Do not file Form 8082:

1. If you are a REMIC and want to correct items on the original REMIC return. Instead, file Form 1065X.
2. For any amount of loss, deduction, or credit from Schedule K-1, Schedule Q, or the foreign trust statement that you do not report on your return because the amount is otherwise limited by law (such as a loss limited by the at-risk or passive activity rules).
3. If you are a partner, and all of the following apply:
 - Your partnership had no more than 10 partners at any one time during the tax year. A husband and wife (and their estates) are treated as one partner.
 - Each partner was either an individual (other than a nonresident alien) or an estate of a deceased partner, or a C corporation.
 - The partnership did not have an election in effect under section 6231(a)(1)(B)(ii) for the tax year to have the consolidated audit rules apply.
4. If you are a shareholder in an S corporation, except as a notice of inconsistent treatment when the shareholder's return is not consistent with the return of the S corporation. Form 8082 cannot be filed by a shareholder to request an administrative adjustment to his or her tax return to correct S corporation items. Instead, the shareholder must file an amended income tax return.
5. If you are a beneficiary of an estate or domestic trust, or a beneficiary or an owner of a foreign trust, except as a notice of inconsistent treatment when the beneficiary's or owner's return is not consistent with the return of the estate or trust. Form 8082 cannot be filed by a beneficiary or owner to request an administrative adjustment to his or her tax return to correct estate or trust items. Instead, the beneficiary or owner must file an amended income tax return.
6. If you are a residual interest holder, and all of the following apply:
 - Your REMIC had no more than 1 residual interest holder at any one time during the tax year.
 - If at any time during the tax year the REMIC had more than one residual interest holder, each residual interest holder was either an individual (other than a nonresident alien) or an estate, or a C corporation.
 - The REMIC did not have an election in effect under section 6231(a)(1)(B)(ii) for the tax year to have the consolidated audit rules apply.
7. If you are a partner in an electing large partnership. Partners must report all partnership items consistently with their treatment on the partnership return as shown on Schedule K-1 (Form 1065-B). Only the partnership may file an AAR.

Penalties

If you disregard the requirements for filing Form 8082, you may be subject to the accuracy-related penalty under section 6662 or the fraud penalty under section 6663. Either penalty is in addition to any tax that results from a computational adjustment to make your amount or treatment of the item consistent with the amount or treatment of the item on the pass-through entity's return.

How Many Forms To Complete

You must complete and file a separate form for each pass-through entity for which you are reporting an inconsistent or AAR item. If you are reporting more than four inconsistent or AAR items from one pass-through entity, use additional Forms 8082.

How and When To File

If you file Form 8082 as a notice of inconsistent treatment, complete a single copy of the form, attach it to your tax return, and file it when you file your original return.

If a TMP or electing large partnership files Form 8082 as an AAR on behalf of the pass-through entity, the TMP or electing large partnership must file it with the service center where the original return was filed.

If a partner or residual interest holder files Form 8082 as an AAR, it must be filed in duplicate. The original copy is filed with the partner's or residual interest holder's amended income tax return, and the other copy is filed with the service center where the pass-through entity return is filed.

Generally, you may file an AAR 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 pass-through entity return for that year is filed, or
 - The last day for filing the pass-through entity return for that year (excluding extensions); **and**
2. Before a notice of final pass-through entity administrative adjustment for that year is mailed to the TMP.

A partnership return or a REMIC return is generally due by the 15th day of the 4th month following the close of the partnership's or REMIC's tax year. The tax year of a REMIC always ends on December 31.

Special rules apply if the period of limitations has been extended by agreement and in the case of an AAR that relates to the deductibility of bad debts or worthless securities. See sections 6227 and 6251 for details.

Judicial Review of an AAR

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 sections 6228 and 6252.

Special Rules for Electing Large Partnerships

An electing large partnership may file an AAR to adjust partnership items. However, a partner may not file an AAR. Generally, the electing large partnership has two choices for handling the adjustment.

1. It can 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 a reduction in a credit which exceeds 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 that 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, as explained in section 6242(b)(4).

In either case, the partnership is liable for any interest and penalties on the imputed underpayment 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 adjusted year and ending on the due date (excluding extensions) of the partnership return for the tax year the adjustment takes effect (or the date the partnership paid the tax due under 2 above, if earlier). The **adjusted year** is the partnership tax year in which the item being adjusted arose.

How to file. Attach Form 8082 to an amended Form 1065-B for the adjusted year. Enter in the top margin of the amended return "See attached Form 8082 for AAR per IRC section 6251." Be sure to check box G(4) on page 1 of the amended return. Identify in Part II of Form 8082 the amount and treatment of any item the partnership is changing from the way it was reported on the original return. If the partnership elects to pay the tax, enter it on line 26 of page 1 of the amended Form 1065-B. Do not enter any other amounts on the amended Form 1065-B. Attach a computation of the tax to Form 8082. 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 under section 704 in the partner's distributive share of any partnership item shown on Form 1065-B, file an amended Schedule

K-1 (Form 1065-B) for that partner with Form 8082. Also give the partner a copy.

Specific Instructions

Specific instructions for most of the lines have been provided. Lines that are not explained are self-explanatory. If, after reading the instructions, you are unable to complete an item in Part I or Part II, enter "See Part III" in the entry space for that item and provide the information there.

Note. If the pass-through entity did not file a return or give you a Schedule K-1, Schedule Q, or foreign trust statement by the time you are required to file your return, complete Parts I and II to the best of your knowledge.

Part I

Line 1. Check box (a) if you believe an item was not properly reported on the Schedule K-1, Schedule Q, or foreign trust statement you received, or you have not received a Schedule K-1, Schedule Q, or foreign trust statement by the time you are required to file your tax return (including extensions).

Check box (b) if you are filing an AAR on which you are requesting a change in the amount or treatment of any item from the way you reported it on your return as originally filed or as you later amended it.

Check both boxes if a partner or residual interest holder is reporting an item on his or her AAR differently from the way that the item was reported on his or her original return and inconsistently with the way the pass-through entity reported the item.

Partnerships requesting substituted return treatment.

Note. If you are a TMP filing an AAR on behalf of the partnership and requesting substituted return treatment, attach a statement to Form 8082 indicating that you are requesting substituted return treatment.

A substituted return is an amended return in which the TMP requests that the treatment of an item shown on the AAR 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.

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.

In either case, if you are a TMP filing an AAR electronically, file an amended Form 1065, but do not enter any amounts on the form itself. Attach Form 8082 and identify the amount and treatment of any item you are changing from the way it was reported on the original return. The TMP must sign the amended return.

Attach amended Schedules K-1 showing the corrected amounts for each partner.

Lines 2 through 6. Generally, the information for these lines can be found on Schedule K-1, Schedule Q, or foreign trust statement.

Part II

Column (a). If you received a Schedule K-1, Schedule Q, or foreign trust statement, enter the line number and description shown on the form. Otherwise, enter a complete description of the item.

Column (b). If you believe that the amount of any item shown on Schedule K-1, Schedule Q, or foreign trust statement was not properly reported, check "Amount of item."

If you believe that the treatment of any item was not properly reported (such as a long-term capital loss that a partner thinks should be an ordinary loss), check "Treatment of item."

Check both parts of column (b) if **either** 1 or 2 below applies:

1. You believe that both the amount and treatment of the item shown on Schedule K-1, Schedule Q, or foreign trust statement were not properly reported, or you believe an item was omitted from the form; or
2. The pass-through entity did not file a return or give you a Schedule K-1, Schedule Q, or foreign trust statement.

Note. If you check only "Treatment of item," you do not need to complete columns (d) and (e).

Column (c). If you attach Form 8082 to your original return, enter the amount as shown on the Schedule K-1, Schedule Q, or foreign trust statement you received.

If you attach Form 8082 to your amended return, enter the amount as shown on your original return or as you amended it prior to the current amendment.

If the pass-through entity did not file a return, or if you did not receive a schedule or statement, or if you are reporting items that you believe were omitted, enter zero in column (c).

Part III

Explain in detail the reasons you are reporting an inconsistent or amended item as follows:

1. If you believe that the amount or treatment of any item shown on Schedule K-1, Schedule Q, or foreign trust

statement was not properly reported, state how you think the item should be treated and why.

2. If the pass-through entity has not filed a tax return by the time you are required to file your tax return, enter as the explanation, "Partnership (S corporation, Estate, Trust, or REMIC) return not filed."

3. If the pass-through entity did not give you a Schedule K-1, Schedule Q, or foreign trust statement by the time you are required to file your tax return, enter as the explanation "Schedule K-1 (Schedule Q, or foreign trust statement) not received."

4. If you are filing an AAR on which you are changing the amount or treatment of any item on your original return, explain why you are changing the item.

5. If you believe an item was omitted from Schedule K-1, Schedule Q, or foreign trust statement, enter as the explanation "Item was omitted from Schedule K-1 (Schedule Q, or foreign trust statement)."

Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated burden for individual taxpayers filing this form is approved under OMB control number 1545-0074 and is included in the estimates shown in the instructions for their individual income tax return. The estimated burden for all other taxpayers who file this form is shown below.

Recordkeeping 4 hr., 4 min.

Learning about the law or the form 1 hr., 23 min.

Preparing and sending the form to the IRS 1 hr., 30 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. See the instructions for the tax return with which this form is filed.