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IRS Interim Guidance on CAMT Application to Partnerships

Notice 2025-28

The IRS has provided interim guidance on the application of the corporate alternative minimum tax (CAMT) to partnerships and CAMT entity partners. The interim guidance generally addresses a partner's distributive share of partnership adjusted financial statement income (AFSI) and AFSI computation resulting from partnership contributions and distributions, and is intended to reduce compliance burdens on partnerships. The IRS intends to partially withdraw some of the CAMT proposed regulations concerning partnership investments and issue revised proposed regulations that will, in part, include rules similar to the interim guidance. Taxpayers may rely on the interim guidance, which modifies the reliance rules provided in the CAMT proposed regulations.

Background

For tax years beginning after 2022, a 15-percent corporate alternative minimum tax (CAMT) is imposed on the adjusted financial statement income (AFSI) of an applicable corporation (generally, a corporation with a three-year average annual income in excess of $1 billion). A corporation's AFSI is the net income or loss reported on the corporation's applicable financial statement (AFS) with adjustments for certain items under Code Sec. 56A.

Under Code Sec. 56A(c)(2)(D), if the taxpayer is a partner in a partnership, the taxpayer's AFSI with respect to the partnership is adjusted to take into account only the taxpayer's distributive share of the partnership's AFSI. The AFSI of a partnership is the partnership's net income or loss set forth on that partnership's AFS (adjusted under rules similar to the rules provided in Code Sec. 56A).

Code Sec. 56A(c)(15) authorizes the IRS to issue regulations or other guidance to provide for such adjustments to AFSI as it determines necessary to carry out the purposes of Code Sec. 56A, including adjustments to AFSI (i) to prevent the omission or duplication of any item, and (ii) to carry out the principles of part II of subchapter K of chapter 1 of the Code (subchapter K), relating to partnership contributions and distributions.

Notice 2023-7, 2023-3 I.R.B. 390, provides interim guidance on certain issues relating to the CAMT, including contributions to, and distributions from, partnerships and states that taxpayers may rely on it until the issuance of the CAMT proposed regulations.

The CAMT proposed regulations (REG-112129-23) address the application of the CAMT and permit taxpayers to rely on the proposed regulations subject to certain conditions and limitations. The CAMT proposed regulations generally provide, among other things, that the AFSI of a CAMT entity partner with respect to its partnership investment is adjusted under the distributive share rules in Proposed Reg. §1.56A-5 and the rules for partnership contributions and distributions in Proposed Reg. §1.56A-20.

Proposed Reg. §1.56A-5 generally requires application of a bottom-up approach to determine a partner's distributive share of partnership AFSI. Proposed Reg. §1.56A-20 provides rules for computing AFSI resulting from partnership contributions and distributions.

Numerous comments were submitted in response to the CAMT proposed regulations, which the IRS continues to consider and study.

Top-Down Election

The forthcoming proposed regulations are expected to include modifications to Proposed Reg. §§1.56A-5 and 1.56A-20 consistent with the interim guidance to allow a CAMT entity partner to make a top-down election to determine its amount of AFSI from a partnership investment for each tax year (starting with the first tax year for which the election is in effect) by reference to the amount the CAMT entity partner reflects in its FSI for the tax year with respect to the partnership investment.

If a CAMT entity partner has a top-down election in effect with respect to a partnership investment, the CAMT entity partner's AFSI for the partnership investment is the sum of (i) 80 percent of the top-down amount, (ii) amounts included in AFSI from a sale or exchange of the partnership investment, and (iii) the AFSI adjustments provided in the interim guidance.

The top-down amount generally equals any amounts reflected in the CAMT entity partner's FSI for the tax year that are attributable to the partnership investment for which the top-down election is in effect. A CAMT entity partner generally makes a top-down election by attaching a statement to its federal income tax return for the tax year.

Limited Taxable-Income Election

The forthcoming proposed regulations are also expected to include modifications to Proposed Reg. §§1.56A-5 and 1.56A-20 consistent with the interim guidance to allow certain CAMT entity partners to make a taxable-income election to use taxable-income amounts to determine their AFSI from a partnership investment.

If a CAMT entity partner has a taxable-income election in effect with respect to a partnership investment for a tax year, the CAMT entity partner's AFSI for the partnership investment for that year is equal to the sum of: (i) the CAMT entity partner's taxable-income amount, (ii) AFSI attributable to certain sales or exchanges, and (iii) the inclusions in AFSI attributable to adjustments described in the guidance.

A CAMT entity partner's taxable-income amount includes the sum of the CAMT entity partner's distributive share of income, gain, loss, and deduction from the partnership investment for regular tax purposes to the extent included in the CAMT entity partner's taxable income, but excluding certain amounts described in the CAMT proposed regulations.

Any CAMT entity partner, other than a partnership, may make a taxable-income election with respect to a partnership in which it is a direct partner if, as of the last day of the tax year, (i) the CAMT entity partner's test group does not own more than 20 percent of the interests in capital or profits of the partnership, and (ii) the fair market value of the partnership investment held by the CAMT entity partner's test group is $200,000,000 or less. An eligible CAMT entity partner generally makes the election by attaching a statement to its income tax return for the tax year in which the election is made.

Reasonable Method to Determine Partner's Distributive Shares of Modified FSI and Reporting Requirements Modification

The forthcoming proposed regulations will further modify Proposed Reg. §1.56A-5

Chief Counsel Office Modifies Signature Block Following Leadership Change

The Office of Chief Counsel announced updated procedures for the signature block used in documents filed with the United States Tax Court, correspondence to the Department of Justice, and other official communications, necessitated by a leadership transition. This change follows the appointment of Kenneth J. Kies as Acting Chief Counsel. Effective immediately, the signature block for Tax Court filings must reflect the following designation: Kenneth J. Kies, Acting Chief Counsel, Internal Revenue Service.

For unsigned or unfiled Tax Court documents containing the previous Chief Counsel's signature block, a sticker or label bearing the updated signature block may be applied without re-execution. Other documents must be revised and signed afresh to include the updated designation. In cases where Mr. Kies is recused due to prior involvement, the signature block will name Audrey M. Morris, Deputy Chief Counsel (Operations), as the signatory. Local counsel has been directed to ensure compliance with these updates and inform relevant Appeals offices of the changes. Questions may be directed to the Office of the Associate Chief Counsel (Procedure & Administration).

Chief Counsel Notice CC-2025-006

REFERENCE KEY

USTC references are to ***U.S. Tax Cases***
Dec references are to ***Tax Court Reports***

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consistent with the interim guidance to allow partnerships to use any reasonable method to determine a CAMT entity partner's distributive share.

Thus, following the determination of modified FSI, a partnership may determine a CAMT entity partner's distributive share of the modified FSI using any reasonable method, provided that it uses the same method for all CAMT entity partners in the partnership. A reasonable method must be consistent with the purposes of Code Sec. 56A and does not include (i) a method that results in the partnership allocating more than, or less than, all of its modified FSI among its partners, or (ii) a method undertaken with a principal purpose of avoiding applicable corporation status or reducing or avoiding a CAMT liability.

The forthcoming proposed regulations will also modify certain reporting requirements in Proposed Reg. §1.56A-5.

Additional Methods to Account for Partnership Contributions and Distributions

The forthcoming proposed regulations will further include modifications to Proposed Reg. §1.56A-20 consistent with the interim guidance to allow CAMT entities to choose from two additional methods to determine AFSI adjustments for partnership contributions and distributions. These additional methods do not apply to partnership contributions and distributions involving stock of a foreign corporation.

A CAMT entity partner may choose to apply Proposed Reg. §1.56A-20 with the modifications described in the interim guidance (the modified -20 method) rather than the corresponding rules in these proposed regulations. In addition, a partnership may apply the principles of Code Secs. 721 and 731 to determine its partners' distributive shares of partnership AFSI resulting from partnership contributions and distributions (the full subchapter K method). This method is elected with the written consent of the CAMT entity partners that were partners at any time during the year for which the full subchapter K method is adopted and that do not have a top-down or taxable-income election in effect with respect to the partnership investment. These methods are elected by attaching a statement to the income tax return or information return for the tax year.

FSI Attributable to Certain Transactions

The forthcoming proposed regulations are also expected to include modifications to Proposed Reg. §§1.56A-5 and 1.56A-20 consistent with this interim guidance to allow a CAMT entity partner to:

- disregard in computing AFSI with respect to a partnership investment any FSI amounts attributable to a consolidation, remeasurement, deconsolidation, dilution, or change in ownership of a partner other than the CAMT entity partner to the extent that such transactions are non-realization events for regular tax purposes, and
- make appropriate adjustments to any relevant CAMT attributes to ensure that the disregarded amounts are not permanently eliminated.

Reliance on Proposed Regulations

The forthcoming proposed regulations will provide that, for tax years beginning before the applicability date of final regulations addressing partnership investments, a taxpayer may generally rely on Proposed Reg. §1.56A-5 and/or Proposed Reg. §1.56A-20 (without any of the modifications by the interim guidance) if the taxpayer and each member of its test group consistently follow the proposed regulations in their entirety.

In addition, for tax years beginning before the date the forthcoming proposed regulations are published, a taxpayer may generally rely on the above proposed regulations (without any of the modifications by the interim guidance) if the taxpayer and each member of its test group consistently follow proposed regulations in their entirety.

Applicability Dates

The forthcoming proposed regulations are expected to provide that rules consistent with the rules described in Sections 3 through 7 of this Notice apply for tax years beginning on or after the date final regulations addressing partnership investments are published in the Federal Register.

For tax years beginning before the date on which forthcoming proposed regulations are published or other guidance modifying the applicability dates is published, taxpayers may choose to apply the interim guidance in Sections 3 through 7 of this Notice, including for purposes of filing amended returns or administrative adjustment requests. Thus, for partnership contributions and distributions in tax years ending on or before the issuance of the CAMT proposed regulations on September 13, 2024, taxpayers may rely on this interim guidance, the guidance in Notice 2023-7, or the CAMT proposed regulations. In each case, any FSI attributable to a partnership contribution or distribution that is deferred must eventually be included in AFSI.

A taxpayer's reliance on any of the guidance in Sections 3 through 7 of this Notice for a tax year will not cause the taxpayer to become subject to, or to violate, the reliance rules, including the consistency requirements, provided in the preamble of the CAMT proposed regulations, for that tax year.

Arrangement With Captive Insurance Companies Did Not Constitute Insurance

Bernard T. Swift, Jr., CA-5, 2025-2 USTC ¶50,201

An arrangement with captive insurance companies did not constitute insurance. The arrangement did not achieve risk distribution. The premium payments made to the companies were not for insurance and, therefore, could not be deducted as business expenses. Additionally, the companies failed to establish risk distribution through direct medical malpractice policies.

The taxpayers took tax deductions for insurance premium payments paid to captive insurance companies. The payments were paid from the husband's medical practice. The Tax Court disallowed the deductions and imposed penalties.

Next, the taxpayers were liable for penalties due to negligence and substantial understatement under Code Sec. 6662. The IRS's failure to obtain approval before sending the notice letter did not violate Code Sec. 6751(b)(1). The taxpayers failed to show reasonable cause. The husband could not reasonably rely on advice from a primary promoter of the transaction. Finally, the taxpayers did not raise the substantial authority argument until their answering brief.

Affirming the Tax Court, Dec. 62,415(M), T.C. Memo. 2024-013.

Law Change Modifies Technical Advice Conclusion

Trail King Industries, Inc., DC S.D., 2025-2 USTC ¶70,391

Taxpayer, a corporation that manufactures trailers, sought a refund for federal excise taxes that it claims were erroneously assessed under Code Sec. 4051(a). The U.S. moved to dismiss the complaint under Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim. The U.S. district court granted in part and denied in part the U.S. motion to dismiss.

Background

Code Sec. 4051(a)(1) imposes a 12% excise tax on the first retail sale of truck trailer and semitrailer chassis and truck trailer and semitrailer bodies. Previously, the taxpayer had requested technical assistance from the IRS Office of Associate Chief Counsel on whether the taxpayer's specific trailer sales were subject to Code Sec. 4051(a). The IRS issued a technical advice memorandum (TAM) finding that the trailer sales were exempt for a quarterly taxable period because the trailers were not "highway vehicles" as defined in Reg. §48.4061(a)-l(d). The TAM did not discuss Code Sec. 7701(a)(48)(A), which was passed ten days prior to the TAM's issuance. Relying on the TAM, the taxpayer continued to apply the "off-highway" exemption to sales of the trailers in subsequent tax years.

TAM Modified

The taxpayer's principal argument is that the U.S. disregarded a "binding" TAM that concluded the trailers were not subject to the federal excise tax under Code Sec. 4051(a) in certain taxable periods. The main argument of the U.S. was that the TAM was not binding on the IRS because it was limited to specific tax periods and that its conclusions were modified or revoked by the enactment of the American Jobs Creation Act (AJCA), which provides a statutory definition of an off-highway vehicle that differed from its previous definition. Under the new definition:

- the phrase "such load" was changed to the more general "a load";
- a vehicle's design is determined solely on the basis of its physical characteristics;
- the listed considerations for substantial limitation or impairment are now the size of the vehicle, whether such vehicle is subject to the licensing, safety, and other requirements applicable to highway vehicles, and whether such vehicle can transport a load at a sustained speed of at least 25 miles per hour; and
- the ability of a vehicle to transport a greater load off the public highway than such vehicle is permitted to transport over the public highway is immaterial.

The court determined that because the enactment of the AJCA modified the TAM's conclusion for quarters to which the AJCA applies, the TAM cannot supersede the AJCA's definition change or render the AJCA definition change inapplicable to the taxpayer.

Charitable Contribution Deductions No Longer Allowed for Organizations

Announcement 2025-21

The IRS has announced that the following organizations no longer qualify under Code Sec. 170(c)(2) as an organization for which deductions for charitable contributions are allowed.

- Just 4 Jacks Ranch & Sanctuary, of Colorado. Effective revocation date: January 1, 2023.
- Youth Inventors Lab, of Minnesota. Effective revocation date: January 1, 2021.
- Childrens Community Services Inc, of New York. Effective revocation date: July 1, 2021.

However, contributions made to the organization before August 4, 2025, will generally be deductible, unless made by a person who (1) knew of the revocation, (2) was aware that the revocation was imminent or (3) was responsible, in whole or in part, for the activities or deficiencies that gave rise to the loss of qualification.

If the organization files suit, in a timely manner, for declaratory judgment under Code Sec. 7428, challenging the revocation of its status as an eligible donee of deductible charitable contributions, Code Sec. 170 contributions will continue to be deductible. Protection under Code Sec. 7428(c) would begin on July 17, 2025. The maximum amount of individual contributions protected would be $1,000, with a husband and wife treated as one taxpayer. This protection is not afforded to anyone who was responsible, in whole or in part, for the acts or omissions of the organization that resulted in revocation of qualification.

IRS Reminds Tax Pros of WISP Requirement

IR-2025-79

The IRS and the Security Summit have reminded tax professionals of their legal obligation to maintain a Written Information Security Plan (WISP) to help protect taxpayer data. The requirement is part of the IRS's "Protect Your Clients; Protect Yourself" campaign and was highlighted during the 2025 IRS Nationwide Tax Forum events.

A WISP is required under the Gramm-Leach-Bliley Act. Because tax professionals are considered financial institutions, they must implement a written data security plan. The plan must designate a responsible employee, assess risks, implement safeguards, and ensure that service providers maintain appropriate protections.

A WISP should address employee training, information systems, and procedures to detect and manage system failures. IRS Publication 5708, Creating a Written Information Security Plan for Your Tax & Accounting Practice, offers a 28-page template to help small and mid-sized practices develop a WISP. WISPs must be reviewed, tested and updated regularly to reflect operational or security changes.

In addition, a data breach response plan should be in place. This includes contacting the IRS Stakeholder Liaison and reporting breaches through the Federation of Tax Administrators' website. Tax professionals must also report breaches to the Federal Trade Commission within 30 days if 500 or more individuals are affected.

IRS Whistleblower Office Celebrates National Whistleblower Day

IR-2025-78

The IRS Whistleblower Office emphasized the role whistleblowers continue to play in supporting the nation's tax administration in recognition of National Whistleblower Appreciation Day on July 30. The IRS has paid over $1.3 billion in awards since 2007 based on $7.5 billion collected from non-compliant taxpayers. In Fiscal Year 2024, the agency issued $123.5 million in awards tied to $474.7 million in recoveries and processed 14,926 claims, an increase of 13 percent from the prior four-year average.

The IRS is modernizing the program through a new claim management system, digital submission portal, and direct deposit for award payments. These improvements aim to enhance service and processing efficiency. Whistleblower awards generally range from 15 to 30 percent of collected proceeds and are based on timely, credible, and specific information. The IRS Whistleblower Office was established in 2007. National Whistleblower Appreciation Day marks the first whistleblower law enacted on July 30, 1778.

Washington Round-up

IRS workforce down 25 percent. The Internal Revenue Service workforce decreased by 25 percent as of February 2025, according to a recent report by the Treasury Inspector General for Tax Administration. In February 2025, the agency had about 103,000 employees. After accounting for the loss of employees who departed the agency due to deferred resignation programs, retirements and other separations (25,386 employees) as well as reduction in force actions (294), 77,428 employees remain, including 3,023 probationary employees who were previously let go but returned to work. Of those who are no longer employed, 27 percent of tax examiners (4,180 employees) and 26 percent of revenue agents (3,070 employees) are no longer with the agency. The Small Business/Self Employed business unit lost the greatest number of employees in percentage and total numbers (35 percent and 8,669 employees), while Taxpayer Services lost 20 percent of its employees (8,604 employees). TIGTA cited the National Taxpayer Advocate, who reported that the workforce reduction "could jeopardize the upcoming filing season" without any technology improvements.

AICPA supports SAFE Act. The American Institute of CPAs voiced its support for the Survivors Assistance for Fearfree and Easy Tax Filing Act of 2025 (S. 2129). In a July 28, 2025, letter to Sen. John Fetterman (D-Pa.), the organization noted that the bill "would allow survivors of domestic abuse or spousal abandonment to file their taxes as if they were not married." The letter highlights a number of benefits of this, including protecting survivors "by allowing them to complete and file their individual income tax returns without needing to file jointly and, therefore, to contact the other spouse. … Ultimately, the SAFE Act would remove the control that abusive or absent spouses may have over survivor spouses and would empower survivors to take back control when it comes to tax returns and tax benefits." A list of AICPA's2025 tax policy and advocacy letters can be found here.

Direct File on the chopping block. The Internal Revenue Service is planning on ending the Direct File program. According to reports, IRS Commissioner Billy Long told attendees at the National Association of Enrolled Agents Tax Summit that the program, which allowed taxpayers in certain states with relatively simple tax returns to use the IRS website to prepare and file their tax returns, will not continue.

TAX BRIEFS

Partnership Loss Deduction

The taxpayer, an individual, was not entitled to deduct partnership losses from two film-related LLCs for the tax years at issue. The Tax Court found that the individual lacked sufficient outside basis under Code Secs. 704(d) and 752, and the Court of Appeals affirmed.

Bryan, Jr., CA-9, 2025-2 USTC ¶50,203

Liens and Levies

A religious entity (taxpayer) (R1) was the nominee for one of R1's properties and R1's bank account. R1 was the nominee chosen by married taxpayers (M12). The IRS imposed (1) a tax lien on the property; and (2) a levy on R1's bank account, to recover unpaid taxes by M12. M12 exercised active or substantial control over the property. Similarly, M12 had decision-making authority over R1's finances and exercised substantial control over R1's bank account.

The Society of Apostolic Church Ministries Bishop, CA-9, 2025-2 USTC ¶50,205

Litigation Settlement

An individual was required to include a settlement received from a former employer in gross income under Code Sec. 61.

Mennemeyer, TC, Dec. 62,697(M)

Microcaptive Insurance

A married couple was not entitled to deduct, from gross income, insurance premiums paid by an S corporation in which they were shareholders to a microcaptive arrangement.

Kadau, TC, Dec. 62,698(M)

Tax Exempt Organizations

Two organizations were denied tax-exempt status for not operating exclusively for exempt purposes under Code Sec. 501. In the first case, the organization failed to establish how its activities would further a charitable purpose and provided vague, inconsistent descriptions of its operations. In the second case, the organization operated a private water service for its shareholders, serving private rather than public interests.

IRS Letter Ruling 202531013; IRS Letter Ruling 202531014

Unrelated Business Income Tax

A nonprofit medical organization qualified as an "educational organization" under Code Sec. 170(b)(1)(A)(ii), the Court of Appeals held, affirming the District Court's decision to grant a refund of unrelated business income tax (UBIT) paid on debt-financed property.

Mayo Clinic, CA-8, 2025-2 USTC ¶50,204