

Bipartisan Budget Act of 2015 makes auditing partnerships easier

Q: What is the Bipartisan Budget Act of 2015 and why should LLCs and other partnerships pay attention?



Erica K. Blackstock represents individuals and businesses in a broad range of transactional matters.

A: Effective this month, the Bipartisan Budget Act of 2015 changes how the Internal Revenue Service [audits and assesses](#) taxes of entities taxed as partnerships, including most limited liability companies. One such change includes replacing the “Tax Matters Partner” with the “Partnership Representative,” which is much more than a mere name modification. In essence, the act makes auditing partnerships easier and more efficient for the IRS, so understanding the weight of designating your Partnership Representative is critical in preparing for your company’s increased exposure to potential audits beginning this year.

Q: What is the difference between the Tax Matters Partner and the Partnership Representative?

A: There are two key differences between the Tax Matters Partner of the past and the Partnership Representative of the present and future. First, the Partnership Representative isn't necessarily a partner (or member, in the case of an LLC) of the entity. Like a manager of an LLC, a Partnership Representative may be any person the company deems fit to serve in such role, who may or may not be an owner of the company. Second, the Partnership Representative has complete authority to act on behalf of the company when communicating with the IRS. Importantly, and unlike the laws previously in effect, there's no statutory obligation to notify the partners or members of the existence or status of an audit, much less include them in any decisions that may significantly impact the tax treatment of the company.

Q: What do businesses need to do to prepare for the change?

A: The partners or members of a company will need to agree on the expectations they have for their Partnership Representative and the desired scope of his or her authority. Then, they should amend their company's governing documents, such as their [partnership agreement](#) or operating agreement, accordingly. In addition to providing for the appointment, removal and replacement of the Partnership Representative, they also should consider demanding timely notice to each partner or member of all IRS communications. Other considerations include requiring the Partnership Representative to make certain elections on behalf of the entity, or obligating the Partnership Representative to use his or her best efforts. Companies also may want to add certain indemnification provisions that bind the Partnership Representative to his or her duties with respect to an audit. Finally, and essentially, they must designate their Partnership Representative on their entity's return each year. As the IRS isn't bound by any partnership or operating

agreement, if a company fails to make the designation on the return, the IRS may select a company's Partnership Representative for them.

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