

## K-2 K-3 Exception for Tax Year 2023

For tax year 2023 returns, IRS' DRAFT instructions are the same as for 2022 returns with one difference.

FIRST, THE RULE FOR GIVING A SCHEDULE K-3 TO AN OWNER. The draft instructions say the entity MUST provide a K-3 to every owner who requests one, regardless of when the request is received. This makes sense, since the entity has the information needed by any owner who has to complete a Form 1116, Foreign Tax Credit, for the owner's personal return.

Here is a summary of the exception to including Schedules K-2/K-3 with the entity's return as we read it.

There are FOUR provisions. If ANY of the four provisions is NOT met, the entity is REQUIRED to include K-2/K-3 with its tax return.

1) The entity has no or limited foreign activity for the year. "Limited" means:

- a) The foreign taxes paid or accrued total \$300 or less,
- b) All foreign income is from the foreign "passive" category (interest, dividends, capital gain distributions, rents, royalties, etc.), except the entity cannot have "high taxed income".
- c) All income and taxes are shown on payee statements (as defined in section 6724(d)(2)) that are furnished or treated as furnished to the entity.

2) ALL owners are individuals who are U.S. citizens or residents, trusts with only beneficiaries who are U.S. citizens or residents, a domestic decedent's estate, and an S corporation with only one shareholder. An ownership by a disregarded entity, such as a single member LLC or and revocable trust, is considered owned directly by the disregarded entity's owner.

3) The entity notifies each owner, no later than the date the owner receives the K-1, that the entity will not be providing the owner a K-3 unless the owner requests it. The notice can be an attachment to the K-1. This notice cannot be later than the due date (including extensions) for filing the entity's return.

4) No owner requests a Schedule K-3 by the date that is ONE MONTH before the date the entity's return is filed. For calendar year 2023 entity returns, the latest this ONE MONTH date can be is August 15, 2024, if the entity files an extension.

If ALL of these four provisions are met, the entity does not have to include K-2/K-3 with the entity's tax return filed with IRS.

ONE CHANGE for 2023 is provision #4. The 2023 DRAFT instructions state: "Any request from a partner for Schedule K-3 information for a year prior to tax year 2023 will be considered a request for a tax year 2023 Schedule K-3 as well." In other words, once a partner asks for a Schedule K-3, the partnership is required to furnish Schedules K-3 to IRS and all partners in all future years UNTIL that partner is no longer a partner.

We recommend the instructions be read for complete details.

This text has been shared courtesy of: David & Mary Mellem, EAs & Ashwaubenon Tax Professionals, 920-496-1065 (fax 920-496-9111).

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