

(vi) Passthrough Entity is not furnished information to meet its reporting obligations under paragraph (b)(1) of this section.

(vii) Filing requirements.

(viii) Penalties.

(c) Regulated investment company (RIC) and real estate investment trust (REIT) reporting.

(1) Section 1061 disclosures.

(i) One Year Amounts Disclosure.

(ii) Three Year Amounts Disclosure.

(2) Pro rata disclosures.

(3) Report to shareholders.

(d) Qualified electing fund (QEF) reporting.

(e) Applicability date.

[T.D. 9945, 86 FR 5480, Jan. 19, 2021]

§ 1.1061-1 Section 1061 definitions.

(a) *Definitions.* The following definitions apply solely for purposes of this section and §§ 1.1061-2 through 1.1061-6.

API Gains and Losses are any long-term capital gains and capital losses with respect to an API and include:

(i) The *API One Year Distributive Share Amount* as defined in § 1.1061-4(a)(3)(i);

(ii) The *API Three Year Distributive Share Amount* as defined in § 1.1061-4(a)(3)(ii);

(iii) The *API One Year Disposition Amount* as defined in § 1.1061-4(a)(4)(i);

(iv) The *API Three Year Disposition Amount* as defined in § 1.1061-4(a)(4)(ii); and

(v) Capital gains or losses from the disposition of Distributed API Property.

API Holder is a person who holds an API.

Applicable Partnership Interest (API) means any interest in a partnership which, directly or indirectly, is transferred to (or is held by) an Owner Taxpayer or Passthrough Taxpayer in connection with the performance of substantial services by the Owner Taxpayer or by a Passthrough Taxpayer, or by any Related Person, including services performed as an employee, in any ATB unless an exception in § 1.1061-3 applies. For purposes of defining an API under this section and section 1061 of the Internal Revenue Code (Code), an interest in a partnership also includes any financial instrument or contract, the value of which is determined in whole or in part by reference to the partnership (including the amount of partnership distributions, the value of partnership assets, or the results of

partnership operations). An Owner Taxpayer and a Passthrough Taxpayer can hold an API directly or indirectly through one or more Passthrough Entities.

Applicable Trade or Business (ATB) means any activity for which the ATB Activity Test with respect to Specified Actions is met, and includes all Specified Actions taken by Related Persons, including combining activities occurring in separate partnership tiers or entities as one ATB.

ATB Activity Test has the meaning provided in § 1.1061-2(b)(1).

Capital account means a capital account maintained under § 1.704-1(b)(2)(iv) or similar principles.

Capital Interest Allocations means, with respect to a partnership, allocations of long-term capital gain or loss made under the partnership agreement to an API Holder and to Unrelated Non-Service Partners based on such partners' capital contributed with respect to the partnership to the extent such allocations otherwise meet the requirements of § 1.1061-3(c). With respect to other Passthrough Entities, the principles of this definition apply.

Capital Interest Disposition Amount has the meaning provided in § 1.1061-3(c)(4).

Capital Interest Gains and Losses has the meaning provided in § 1.1061-3(c)(2).

Distributed API Property means property distributed by a Passthrough Entity to an API Holder with respect to an API if the holding period, as determined under sections 735 and 1223, in the API Holder's hands is three years or less at the time of disposition of the property by the API Holder.

Indirect API means an API that is held through one or more Passthrough Entities.

Investing or Developing Actions means actions involving either—

(i) Investing in (or disposing of) Specified Assets (or identifying Specified Assets for such investing or disposition); or

(ii) Developing Specified Assets (see § 1.1061-2(b)(1)(ii)).

Lookthrough Rule means the re-characterization rule described in § 1.1061-4(b)(9).

One Year Gain Amount has the meaning provided in § 1.1061-4(a)(2)(i).

Owner Taxpayer means the person subject to Federal income tax on net gain with respect to an API or an Indirect API during the taxable year, including an owner of a Passthrough Taxpayer unless the owner of the Passthrough Taxpayer is a Passthrough Entity itself or is excepted under § 1.1061-3(a), (b), or (d).

Passthrough Entity means a partnership, trust, estate, S corporation described in § 1.1061-3(b)(2)(i), or passive foreign investment company described in § 1.1061-3(b)(2)(ii).

Passthrough Interest means an interest in a Passthrough Entity that represents in whole or in part an API.

Passthrough Taxpayer means a Passthrough Entity that is treated as a taxpayer for the purpose of determining the existence of an API.

Raising or Returning Capital Actions means actions involving raising or returning capital but does not include Investing or Developing Actions.

Recharacterization Amount has the meaning provided in § 1.1061-4(a)(1).

Related Person means a person or entity who is treated as related to another person or entity under sections 707(b) or 267(b).

Relevant ATB means the ATB in which services were provided and in connection with which an API is held or was transferred.

Section 1061(d) Recharacterization Amount has the meaning provided in § 1.1061-5(c).

Section 1061(d) Related Person has the meaning provided in § 1.1061-5(e).

Section 1061 Regulations means the provisions of this section and §§ 1.1061-2 through 1.1061-6.

Specified Actions means the combination of Raising or Returning Capital Actions and Investing or Developing Actions.

Specified Assets means—

(i) Securities, including interests in partnerships qualifying as securities (as defined in section 475(c)(2) without regard to the last sentence thereof);

(ii) Commodities (as defined in section 475(e)(2));

(iii) Real estate held for rental or investment;

(iv) Cash or cash equivalents; and

(v) An interest in a partnership to the extent that the partnership holds Specified Assets. See § 1.1061-2(b)(1)(iii).

(vi) Specified Assets include options or derivative contracts with respect to any of the items provided in paragraphs (i) through (v) of this definition.

Three Year Gain Amount has the meaning provided in § 1.1061-4(a)(2)(ii).

Unrealized API Gains and Losses means, with respect to a Passthrough Entity's assets, all unrealized capital gains and losses that would be:

(i) Realized if those assets were disposed of for fair market value in a taxable transaction on the relevant date; and

(ii) Allocated to an API Holder with respect to its API, taking into account the principles of section 704(c).

Unrelated Non-Service Partners means partners who do not (and did not) provide services in the Relevant ATB and who are not (and were not) Related Persons with respect to any API Holder in the partnership or any person who provides or has provided services in the Relevant ATB.

(b) *Applicability date.* The provisions of this section apply to taxable years of Owner Taxpayers and Passthrough Entities beginning on or after January 19, 2021. An Owner Taxpayer or Passthrough Entity may choose to apply this section to a taxable year beginning after December 31, 2017, provided that they consistently apply the Section 1061 Regulations in their entirety to that year and all subsequent years.

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§ 1.1061-2 Applicable partnership interests and applicable trades or businesses.

(a) *API rules and examples—(1) Rules—*

(i) *An API remains an API.* Once a partnership interest qualifies as an API, the partnership interest remains an API unless and until the requirements of one of the exceptions to qualification of a partnership interest as an API, set forth in § 1.1061-3, are satisfied.

(ii) *Application of section 1061 to Unrealized API Gains and Losses.* Unrealized API Gains and Losses are API Gains and Losses subject to section 1061 when the gains and losses are realized and recognized. Unrealized API Gains and