

## **Partner/Member/Shareholder Foreign Safe Harbor Statement and Declaration**

Dear Client (Partner/LLC member/Shareholder):

On Jan 18, 2022 the IRS issued Notice 2021-39 regarding Foreign Tax Credit issues, and implemented new reporting requirements for ALL Partnerships, LLCs (filing 1065 or 1120S) and all S-corporations. The forms and rules surrounding this tax law are currently still in effect for the 2023 filing year.

The new K2 and K3 forms are complicated and full of instructions and disclosures, so should your entity require these forms, the tax preparation fee will be more than in the past and the additional information required will be your responsibility to provide. It is possible the forms may be required, even if there is no data/dollars to be reflected.

These new forms are required to disclose Foreign Assets, Income, Investments and/or Foreign Tax Credits. The K2 is for the entity, and the K3 is issued with the K1s to all partnership partners, LLC members or S-corporation shareholders. These forms are another way Congress is tracking foreign income activities, and/or illegal foreign financial transactions.

If the business has no foreign activities AND the individual partners/members/shareholders are exempt from filing the IRS Form 1116 (Foreign Income and Tax Credit) on their *personal* 1040 returns, then the business is exempt from filing the K2/K3 forms. But if either the business has foreign activity or at least one owner of the business has foreign reporting requirements, the new forms are required.

IRS Notice 2021-39 allows us, as preparers, to rely on a good-faith safe harbor statement from each and every partner/member/shareholder indicating they, as individuals, are not subject to the Form 1116 reporting on their personal 1040. This statement is required to be in our files for all recipients of a K1. If the individual does not, or will not, acknowledge that they are exempt, we are required to assume they are not exempt, and the additional filing requirements will apply. If we also prepare any of the personal returns and discover that in-fact someone does have the 1116 filing, we will correct the entity return and properly prepare (and charge) for the K2 and K3s as needed.

### **Instructions:**

Reproduce this document and issue to all partners/members/shareholders. Each must sign and date and return to the responsible person in the entity, or to us, to complete the business return. Husband and wife K1 recipients each sign their own. If a K1 recipient is another entity, then the responsible individual for that entity must sign. If a K1 recipient is a disregarded entity (aka: a single member LLC), then the individual must sign.

“I, \_\_\_\_\_ (K1 recipient name), as a partner/member/shareholder  
of \_\_\_\_\_ (business name), confirm that I am not personally subject to  
filing Form 1116 (Foreign Income & Tax Credit) with my Individual 1040.”

