

tion] shall apply to partnership taxable years ending after the date of the enactment of this Act [Aug. 5, 1997].”

Section 1234(b) of Pub. L. 105-34 provided that: “The amendment made by this section [amending this section] shall apply to partnership taxable years ending after the date of the enactment of this Act [Aug. 5, 1997].”

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

SPECIAL RULE FOR CERTAIN INTERNATIONAL SATELLITE PARTNERSHIPS

Section 406 of Pub. L. 97-248, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: “Subchapter C of chapter 63 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to tax treatment of partnership items), section 6031 of such Code (relating to returns of partnership income), and section 6046A of such Code (relating to returns as to interest in foreign partnerships) shall not apply to the International Telecommunications Satellite Organization, the International Maritime Satellite Organization, and any organization which is a successor of either of such organizations.”

[§ 6232. Repealed. Pub. L. 100-418, title I, § 1941(b)(1), Aug. 23, 1988, 102 Stat. 1323]

Section, added Pub. L. 97-248, title IV, § 402(a), Sept. 3, 1982, 96 Stat. 666, related to extension of subchapter provisions, respecting tax treatment of partnership items, to windfall profit tax.

EFFECTIVE DATE OF REPEAL

Repeal applicable to crude oil removed from the premises on or after Aug. 23, 1988, see section 1941(c) of Pub. L. 100-418, set out as an Effective Date of 1988 Amendment note under section 164 of this title.

§ 6233. Extension to entities filing partnership returns, etc.

(a) General rule

If a partnership return is filed by an entity for a taxable year but it is determined that the entity is not a partnership for such year, then, to the extent provided in regulations, the provisions of this subchapter are hereby extended in respect of such year to such entity and its items and to persons holding an interest in such entity.

(b) Similar rules in certain cases

If a partnership return is filed for any taxable year but it is determined that there is no entity for such taxable year, to the extent provided in regulations, rules similar to the rules of subsection (a) shall apply.

(Added Pub. L. 98-369, div. A, title VII, § 714(p)(1), July 18, 1984, 98 Stat. 964; amended Pub. L. 104-188, title I, § 1307(c)(3)(B), Aug. 20, 1996, 110 Stat. 1782.)

AMENDMENTS

1996—Subsec. (b). Pub. L. 104-188 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “If for any taxable year—

“(1) an entity files a return as an S corporation but it is determined that the entity was not an S corporation for such year, or

“(2) a partnership return or S corporation return is filed but it is determined that there is no entity for such taxable year, then, to the extent provided in regulations, rules similar to the rules of subsection (a) shall apply.”

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-188 applicable to taxable years beginning after Dec. 31, 1996, see section 1317(a) of Pub. L. 104-188, set out as a note under section 641 of this title.

EFFECTIVE DATE

Section effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as an Effective Date of 1984 Amendment note under section 31 of this title.

§ 6234. Declaratory judgment relating to treatment of items other than partnership items with respect to an oversheltered return

(a) General rule

If—

(1) a taxpayer files an oversheltered return for a taxable year,

(2) the Secretary makes a determination with respect to the treatment of items (other than partnership items) of such taxpayer for such taxable year, and

(3) the adjustments resulting from such determination do not give rise to a deficiency (as defined in section 6211) but would give rise to a deficiency if there were no net loss from partnership items,

the Secretary is authorized to send a notice of adjustment reflecting such determination to the taxpayer by certified or registered mail.

(b) Oversheltered return

For purposes of this section, the term “oversheltered return” means an income tax return which—

(1) shows no taxable income for the taxable year, and

(2) shows a net loss from partnership items.

(c) Judicial review in the Tax Court

Within 90 days, or 150 days if the notice is addressed to a person outside the United States, after the day on which the notice of adjustment authorized in subsection (a) is mailed to the taxpayer, the taxpayer may file a petition with the Tax Court for redetermination of the adjustments. Upon the filing of such a petition, the Tax Court shall have jurisdiction to make a declaration with respect to all items (other than partnership items and affected items which require partner level determinations as described in section 6230(a)(2)(A)(i)) for the taxable year to which the notice of adjustment relates, in accordance with the principles of section 6214(a). Any such declaration shall have the force and effect of a decision of the Tax Court and shall be reviewable as such.

(d) Failure to file petition

(1) In general

Except as provided in paragraph (2), if the taxpayer does not file a petition with the Tax Court within the time prescribed in subsection (c), the determination of the Secretary set

forth in the notice of adjustment that was mailed to the taxpayer shall be deemed to be correct.

(2) Exception

Paragraph (1) shall not apply after the date that the taxpayer—

(A) files a petition with the Tax Court within the time prescribed in subsection (c) with respect to a subsequent notice of adjustment relating to the same taxable year, or

(B) files a claim for refund of an overpayment of tax under section 6511 for the taxable year involved.

If a claim for refund is filed by the taxpayer, then solely for purposes of determining (for the taxable year involved) the amount of any computational adjustment in connection with a partnership proceeding under this subchapter (other than under this section) or the amount of any deficiency attributable to affected items in a proceeding under section 6230(a)(2), the items that are the subject of the notice of adjustment shall be presumed to have been correctly reported on the taxpayer's return during the pendency of the refund claim (and, if within the time prescribed by section 6532 the taxpayer commences a civil action for refund under section 7422, until the decision in the refund action becomes final).

(e) Limitations period

(1) In general

Any notice to a taxpayer under subsection (a) shall be mailed before the expiration of the period prescribed by section 6501 (relating to the period of limitations on assessment).

(2) Suspension when Secretary mails notice of adjustment

If the Secretary mails a notice of adjustment to the taxpayer for a taxable year, the period of limitations on the making of assessments shall be suspended for the period during which the Secretary is prohibited from making the assessment (and, in any event, if a proceeding in respect of the notice of adjustment is placed on the docket of the Tax Court, until the decision of the Tax Court becomes final), and for 60 days thereafter.

(3) Restrictions on assessment

Except as otherwise provided in section 6851, 6852, or 6861, no assessment of a deficiency with respect to any tax imposed by subtitle A attributable to any item (other than a partnership item or any item affected by a partnership item) shall be made—

(A) until the expiration of the applicable 90-day or 150-day period set forth in subsection (c) for filing a petition with the Tax Court, or

(B) if a petition has been filed with the Tax Court, until the decision of the Tax Court has become final.

(f) Further notices of adjustment restricted

If the Secretary mails a notice of adjustment to the taxpayer for a taxable year and the taxpayer files a petition with the Tax Court within the time prescribed in subsection (c), the Sec-

retary may not mail another such notice to the taxpayer with respect to the same taxable year in the absence of a showing of fraud, malfeasance, or misrepresentation of a material fact.

(g) Coordination with other proceedings under this subchapter

(1) In general

The treatment of any item that has been determined pursuant to subsection (c) or (d) shall be taken into account in determining the amount of any computational adjustment that is made in connection with a partnership proceeding under this subchapter (other than under this section), or the amount of any deficiency attributable to affected items in a proceeding under section 6230(a)(2), for the taxable year involved. Notwithstanding any other law or rule of law pertaining to the period of limitations on the making of assessments, for purposes of the preceding sentence, any adjustment made in accordance with this section shall be taken into account regardless of whether any assessment has been made with respect to such adjustment.

(2) Special rule in case of computational adjustment

In the case of a computational adjustment that is made in connection with a partnership proceeding under this subchapter (other than under this section), the provisions of paragraph (1) shall apply only if the computational adjustment is made within the period prescribed by section 6229 for assessing any tax under subtitle A which is attributable to any partnership item or affected item for the taxable year involved.

(3) Conversion to deficiency proceeding

If—

(A) after the notice referred to in subsection (a) is mailed to a taxpayer for a taxable year but before the expiration of the period for filing a petition with the Tax Court under subsection (c) (or, if a petition is filed with the Tax Court, before the Tax Court makes a declaration for that taxable year), the treatment of any partnership item for the taxable year is finally determined, or any such item ceases to be a partnership item pursuant to section 6231(b), and

(B) as a result of that final determination or cessation, a deficiency can be determined with respect to the items that are the subject of the notice of adjustment,

the notice of adjustment shall be treated as a notice of deficiency under section 6212 and any petition filed in respect of the notice shall be treated as an action brought under section 6213.

(4) Finally determined

For purposes of this subsection, the treatment of partnership items shall be treated as finally determined if—

(A) the Secretary or the Attorney General (or his delegate) enters into a settlement agreement (within the meaning of section 6224) with the taxpayer regarding such items,

(B) a notice of final partnership administrative adjustment has been issued and—

(i) no petition has been filed under section 6226 and the time for doing so has expired, or

(ii) a petition has been filed under section 6226 and the decision of the court has become final, or

(C) the period within which any tax attributable to such items may be assessed against the taxpayer has expired.

(h) Special rules if Secretary incorrectly determines applicable procedure

(1) Special rule if Secretary erroneously mails notice of adjustment

If the Secretary erroneously determines that subchapter B does not apply to a taxable year of a taxpayer and consistent with that determination timely mails a notice of adjustment to the taxpayer pursuant to subsection (a) of this section, the notice of adjustment shall be treated as a notice of deficiency under section 6212 and any petition that is filed in respect of the notice shall be treated as an action brought under section 6213.

(2) Special rule if Secretary erroneously mails notice of deficiency

If the Secretary erroneously determines that subchapter B applies to a taxable year of a taxpayer and consistent with that determination timely mails a notice of deficiency to the taxpayer pursuant to section 6212, the notice of deficiency shall be treated as a notice of adjustment under subsection (a) and any petition that is filed in respect of the notice shall be treated as an action brought under subsection (c).

(Added Pub. L. 105-34, title XII, §1231(a), Aug. 5, 1997, 111 Stat. 1020; amended Pub. L. 107-147, title IV, §416(d)(1)(D), Mar. 9, 2002, 116 Stat. 55.)

AMENDMENTS

2002—Subsec. (g)(4)(A). Pub. L. 107-147 inserted “or the Attorney General (or his delegate)” after “Secretary”.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-147 applicable with respect to settlement agreements entered into after Mar. 9, 2002, see section 416(d)(2) of Pub. L. 107-147, set out as a note under section 6224 of this title.

EFFECTIVE DATE

Section applicable to partnership taxable years ending after Aug. 5, 1997, see section 1231(d) of Pub. L. 105-34, set out as an Effective Date of 1997 Amendment note under section 6211 of this title.

Subchapter D—Treatment of Electing Large Partnerships

Part

- I. Treatment of partnership items and adjustments.
- II. Partnership level adjustments.
- III. Definitions and special rules.

PART I—TREATMENT OF PARTNERSHIP ITEMS AND ADJUSTMENTS

Sec.

- 6240. Application of subchapter.
- 6241. Partner's return must be consistent with partnership return.

Sec.

- 6242. Procedures for taking partnership adjustments into account.

PRIOR PROVISIONS

A prior subchapter D, Tax Treatment of Subchapter S Items, consisted of sections 6241 to 6245, prior to repeal by Pub. L. 104-188, title I, §1307(c)(1), Aug. 20, 1996, 110 Stat. 1781.

§ 6240. Application of subchapter

(a) General rule

This subchapter shall only apply to electing large partnerships and partners in such partnerships.

(b) Coordination with other partnership audit procedures

(1) In general

Subchapter C of this chapter shall not apply to any electing large partnership other than in its capacity as a partner in another partnership which is not an electing large partnership.

(2) Treatment where partner in other partnership

If an electing large partnership is a partner in another partnership which is not an electing large partnership—

(A) subchapter C of this chapter shall apply to items of such electing large partnership which are partnership items with respect to such other partnership, but

(B) any adjustment under such subchapter C shall be taken into account in the manner provided by section 6242.

(Added Pub. L. 105-34, title XII, §1222(a), Aug. 5, 1997, 111 Stat. 1009.)

EFFECTIVE DATE

Subchapter applicable to partnership taxable years beginning after Dec. 31, 1997, see section 1226 of Pub. L. 105-34, as amended, set out as an Effective Date of 1997 Amendment note under section 6011 of this title.

§ 6241. Partner's return must be consistent with partnership return

(a) General rule

A partner of any electing large partnership shall, on the partner's return, treat each partnership item attributable to such partnership in a manner which is consistent with the treatment of such partnership item on the partnership return.

(b) Underpayment due to inconsistent treatment assessed as math error

Any underpayment of tax by a partner by reason of failing to comply with the requirements of subsection (a) shall be assessed and collected in the same manner as if such underpayment were on account of a mathematical or clerical error appearing on the partner's return. Paragraph (2) of section 6213(b) shall not apply to any assessment of an underpayment referred to in the preceding sentence.

(c) Adjustments not to affect prior year of partners

(1) In general

Except as provided in paragraph (2), subsections (a) and (b) shall apply without regard