

(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

to any adjustment to the partnership item under part II.

**(2) Certain changes in distributive share taken into account by partner**

**(A) In general**

To the extent that any adjustment under part II involves a change under section 704 in a partner's distributive share of the amount of any partnership item shown on the partnership return, such adjustment shall be taken into account in applying this title to such partner for the partner's taxable year for which such item was required to be taken into account.

**(B) Coordination with deficiency procedures**

**(i) In general**

Subchapter B shall not apply to the assessment or collection of any underpayment of tax attributable to an adjustment referred to in subparagraph (A).

**(ii) Adjustment not precluded**

Notwithstanding any other law or rule of law, nothing in subchapter B (or in any proceeding under subchapter B) shall preclude the assessment or collection of any underpayment of tax (or the allowance of any credit or refund of any overpayment of tax) attributable to an adjustment referred to in subparagraph (A) and such assessment or collection or allowance (or any notice thereof) shall not preclude any notice, proceeding, or determination under subchapter B.

**(C) Period of limitations**

The period for—

- (i) assessing any underpayment of tax, or
- (ii) filing a claim for credit or refund of any overpayment of tax,

attributable to an adjustment referred to in subparagraph (A) shall not expire before the close of the period prescribed by section 6248 for making adjustments with respect to the partnership taxable year involved.

**(D) Tiered structures**

If the partner referred to in subparagraph (A) is another partnership or an S corporation, the rules of this paragraph shall also apply to persons holding interests in such partnership or S corporation (as the case may be); except that, if such partner is an electing large partnership, the adjustment referred to in subparagraph (A) shall be taken into account in the manner provided by section 6242.

**(d) Addition to tax for failure to comply with section**

**For addition to tax in case of partner's disregard of requirements of this section, see part II of subchapter A of chapter 68.**

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

PRIOR PROVISIONS

A prior section 6241, added Pub. L. 97-354, § 4(a), Oct. 19, 1982, 96 Stat. 1691, directed that tax treatment be determined at the corporate level, prior to repeal by Pub.

L. 104-188, title I, §§ 1307(c)(1), 1317(a), Aug. 20, 1996, 110 Stat. 1781, 1787, applicable to taxable years beginning after Dec. 31, 1996.

**§ 6242. Procedures for taking partnership adjustments into account**

**(a) Adjustments flow through to partners for year in which adjustment takes effect**

**(1) In general**

If any partnership adjustment with respect to any partnership item takes effect (within the meaning of subsection (d)(2)) during any partnership taxable year and if an election under paragraph (2) does not apply to such adjustment, such adjustment shall be taken into account in determining the amount of such item for the partnership taxable year in which such adjustment takes effect. In applying this title to any person who is (directly or indirectly) a partner in such partnership during such partnership taxable year, such adjustment shall be treated as an item actually arising during such taxable year.

**(2) Partnership liable in certain cases**

If—

(A) a partnership elects under this paragraph to not take an adjustment into account under paragraph (1),

(B) a partnership does not make such an election but in filing its return for any partnership taxable year fails to take fully into account any partnership adjustment as required under paragraph (1), or

(C) any partnership adjustment involves a reduction in a credit which exceeds the amount of such credit determined for the partnership taxable year in which the adjustment takes effect,

the partnership shall pay to the Secretary an amount determined by applying the rules of subsection (b)(4) to the adjustments not so taken into account and any excess referred to in subparagraph (C).

**(3) Offsetting adjustments taken into account**

If a partnership adjustment requires another adjustment in a taxable year after the adjusted year and before the partnership taxable year in which such partnership adjustment takes effect, such other adjustment shall be taken into account under this subsection for the partnership taxable year in which such partnership adjustment takes effect.

**(4) Coordination with part II**

Amounts taken into account under this subsection for any partnership taxable year shall continue to be treated as adjustments for the adjusted year for purposes of determining whether such amounts may be readjusted under part II.

**(b) Partnership liable for interest and penalties**

**(1) In general**

If a partnership adjustment takes effect during any partnership taxable year and such adjustment results in an imputed underpayment for the adjusted year, the partnership—

(A) shall pay to the Secretary interest computed under paragraph (2), and