

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

(B) shall be liable for any penalty, addition to tax, or additional amount as provided in paragraph (3).

**(2) Determination of amount of interest**

The interest computed under this paragraph with respect to any partnership adjustment is the interest which would be determined under chapter 67—

(A) on the imputed underpayment determined under paragraph (4) with respect to such adjustment,

(B) for the period beginning on the day after the return due date for the adjusted year and ending on the return due date for the partnership taxable year in which such adjustment takes effect (or, if earlier, in the case of any adjustment to which subsection (a)(2) applies, the date on which the payment under subsection (a)(2) is made).

Proper adjustments in the amount determined under the preceding sentence shall be made for adjustments required for partnership taxable years after the adjusted year and before the year in which the partnership adjustment takes effect by reason of such partnership adjustment.

**(3) Penalties**

A partnership shall be liable for any penalty, addition to tax, or additional amount for which it would have been liable if such partnership had been an individual subject to tax under chapter 1 for the adjusted year and the imputed underpayment determined under paragraph (4) were an actual underpayment (or understatement) for such year.

**(4) Imputed underpayment**

For purposes of this subsection, the imputed underpayment determined under this paragraph with respect to any partnership adjustment is the underpayment (if any) which would result—

(A) by netting all adjustments to items of income, gain, loss, or deduction and by treating any net increase in income as an underpayment equal to the amount of such net increase multiplied by the highest rate of tax in effect under section 1 or 11 for the adjusted year, and

(B) by taking adjustments to credits into account as increases or decreases (whichever is appropriate) in the amount of tax.

For purposes of the preceding sentence, any net decrease in a loss shall be treated as an increase in income and a similar rule shall apply to a net increase in a loss.

**(c) Administrative provisions**

**(1) In general**

Any payment required by subsection (a)(2) or (b)(1)(A)—

(A) shall be assessed and collected in the same manner as if it were a tax imposed by subtitle C, and

(B) shall be paid on or before the return due date for the partnership taxable year in which the partnership adjustment takes effect.

**(2) Interest**

For purposes of determining interest, any payment required by subsection (a)(2) or

(b)(1)(A) shall be treated as an underpayment of tax.

**(3) Penalties**

**(A) In general**

In the case of any failure by any partnership to pay on the date prescribed therefor any amount required by subsection (a)(2) or (b)(1)(A), there is hereby imposed on such partnership a penalty of 10 percent of the underpayment. For purposes of the preceding sentence, the term “underpayment” means the excess of any payment required under this section over the amount (if any) paid on or before the date prescribed therefor.

**(B) Accuracy-related and fraud penalties made applicable**

For purposes of part II of subchapter A of chapter 68, any payment required by subsection (a)(2) shall be treated as an underpayment of tax.

**(d) Definitions and special rules**

For purposes of this section—

**(1) Partnership adjustment**

The term “partnership adjustment” means any adjustment in the amount of any partnership item of an electing large partnership.

**(2) When adjustment takes effect**

A partnership adjustment takes effect—

(A) in the case of an adjustment pursuant to the decision of a court in a proceeding brought under part II, when such decision becomes final,

(B) in the case of an adjustment pursuant to any administrative adjustment request under section 6251, when such adjustment is allowed by the Secretary, or

(C) in any other case, when such adjustment is made.

**(3) Adjusted year**

The term “adjusted year” means the partnership taxable year to which the item being adjusted relates.

**(4) Return due date**

The term “return due date” means, with respect to any taxable year, the date prescribed for filing the partnership return for such taxable year (determined without regard to extensions).

**(5) Adjustments involving changes in character**

Under regulations, appropriate adjustments in the application of this section shall be made for purposes of taking into account partnership adjustments which involve a change in the character of any item of income, gain, loss, or deduction.

**(e) Payments nondeductible**

No deduction shall be allowed under subtitle A for any payment required to be made by an electing large partnership under this section.

(Added Pub. L. 105-34, title XII, §1222(a), Aug. 5, 1997, 111 Stat. 1010.)

PRIOR PROVISIONS

A prior section 6242, added Pub. L. 97-354, §4(a), Oct. 19, 1982, 96 Stat. 1691, directed that shareholder’s return

be consistent with corporate return, 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.

A prior section 6243, added Pub. L. 97-354, §4(a), Oct. 19, 1982, 96 Stat. 1691, directed that shareholders be notified of proceedings and given opportunity to participate, 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.

A prior section 6244, added Pub. L. 97-354, §4(a), Oct. 19, 1982, 96 Stat. 1691, directed that certain provisions of subchapter C apply to subchapter S items, 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.

## PART II—PARTNERSHIP LEVEL ADJUSTMENTS

### Subpart

- A. Adjustments by Secretary.
- B. Claims for adjustments by partnership.

### SUBPART A—ADJUSTMENTS BY SECRETARY

#### Sec.

- 6245. Secretarial authority.
- 6246. Restrictions on partnership adjustments.
- 6247. Judicial review of partnership adjustment.
- 6248. Period of limitations for making adjustments.

## § 6245. Secretarial authority

### (a) General rule

The Secretary is authorized and directed to make adjustments at the partnership level in any partnership item to the extent necessary to have such item be treated in the manner required.

### (b) Notice of partnership adjustment

#### (1) In general

If the Secretary determines that a partnership adjustment is required, the Secretary is authorized to send notice of such adjustment to the partnership by certified mail or registered mail. Such notice shall be sufficient if mailed to the partnership at its last known address even if the partnership has terminated its existence.

#### (2) Further notices restricted

If the Secretary mails a notice of a partnership adjustment to any partnership for any partnership taxable year and the partnership files a petition under section 6247 with respect to such notice, in the absence of a showing of fraud, malfeasance, or misrepresentation of a material fact, the Secretary shall not mail another such notice to such partnership with respect to such taxable year.

#### (3) Authority to rescind notice with partnership consent

The Secretary may, with the consent of the partnership, rescind any notice of a partnership adjustment mailed to such partnership. Any notice so rescinded shall not be treated as a notice of a partnership adjustment, for purposes of this section, section 6246, and section 6247, and the taxpayer shall have no right to bring a proceeding under section 6247 with respect to such notice. Nothing in this subsection shall affect any suspension of the run-

ning of any period of limitations during any period during which the rescinded notice was outstanding.

(Added Pub. L. 105-34, title XII, §1222(a), Aug. 5, 1997, 111 Stat. 1013.)

### PRIOR PROVISIONS

A prior section 6245, added Pub. L. 97-354, §4(a), Oct. 19, 1982, 96 Stat. 1692, defined “subchapter S item” for purposes of subchapter, 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.

## § 6246. Restrictions on partnership adjustments

### (a) General rule

Except as otherwise provided in this chapter, no adjustment to any partnership item may be made (and no levy or proceeding in any court for the collection of any amount resulting from such adjustment may be made, begun or prosecuted) before—

(1) the close of the 90th day after the day on which a notice of a partnership adjustment was mailed to the partnership, and

(2) if a petition is filed under section 6247 with respect to such notice, the decision of the court has become final.

### (b) Premature action may be enjoined

Notwithstanding section 7421(a), any action which violates subsection (a) may be enjoined in the proper court, including the Tax Court. The Tax Court shall have no jurisdiction to enjoin any action under this subsection unless a timely petition has been filed under section 6247 and then only in respect of the adjustments that are the subject of such petition.

### (c) Exceptions to restrictions on adjustments

#### (1) Adjustments arising out of math or clerical errors

##### (A) In general

If the partnership is notified that, on account of a mathematical or clerical error appearing on the partnership return, an adjustment to a partnership item is required, rules similar to the rules of paragraphs (1) and (2) of section 6213(b) shall apply to such adjustment.

##### (B) Special rule

If an electing large partnership is a partner in another electing large partnership, any adjustment on account of such partnership's failure to comply with the requirements of section 6241(a) with respect to its interest in such other partnership shall be treated as an adjustment referred to in subparagraph (A), except that paragraph (2) of section 6213(b) shall not apply to such adjustment.

#### (2) Partnership may waive restrictions

The partnership shall at any time (whether or not a notice of partnership adjustment has been issued) have the right, by a signed notice in writing filed with the Secretary, to waive the restrictions provided in subsection (a) on the making of any partnership adjustment.

### (d) Limit where no proceeding begun

If no proceeding under section 6247 is begun with respect to any notice of a partnership ad-