

unpaid as of such date, see section 3201(g)(1) of Pub. L. 105-206, set out as a note under section 6015 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-34, title XII, §1237(d), Aug. 5, 1997, 111 Stat. 1026, provided that: “The amendments made by this section [amending this section and section 6503 of this title] shall take effect as if included in the amendments made by section 402 of the Tax Equity and Fiscal Responsibility Act of 1982 [Pub. L. 97-248].”

Amendment by section 1238(b)(2)–(6) of Pub. L. 105-34 applicable to partnership taxable years ending after Aug. 5, 1997, see section 1238(c) of Pub. L. 105-34, set out as a note under section 6221 of this title.

Amendment by section 1239(c)(1) of Pub. L. 105-34 applicable to partnership taxable years ending after Aug. 5, 1997, see section 1239(f) of Pub. L. 105-34, set out as a note under section 6225 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-572 effective Oct. 29, 1992, see section 911 of Pub. L. 102-572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99-514, title XVIII, §1875(d)(2)(C), Oct. 22, 1986, 100 Stat. 2896, provided that: “The amendments made by this paragraph [amending this section and sections 6213 and 6503 of this title] shall take effect as if included in the Tax Equity and Fiscal Responsibility Act of 1982 [Pub. L. 97-248].”

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.

**PLAN AMENDMENTS NOT REQUIRED UNTIL
JANUARY 1, 1989**

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101-1147 and 1171-1177] or title XVIII [§§1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

§ 6231. Definitions and special rules

(a) Definitions

For purposes of this subchapter—

(1) Partnership

(A) In general

Except as provided in subparagraph (B), the term “partnership” means any partnership required to file a return under section 6031(a).

(B) Exception for small partnerships

(i) In general

The term “partnership” shall not include any partnership having 10 or fewer partners each of whom is an individual (other than a nonresident alien), a C cor-

poration, or an estate of a deceased partner. For purposes of the preceding sentence, a husband and wife (and their estates) shall be treated as 1 partner.

(ii) Election to have subchapter apply

A partnership (within the meaning of subparagraph (A)) may for any taxable year elect to have clause (i) not apply. Such election shall apply for such taxable year and all subsequent taxable years unless revoked with the consent of the Secretary.

(2) Partner

The term “partner” means—

(A) a partner in the partnership, and

(B) any other person whose income tax liability under subtitle A is determined in whole or in part by taking into account directly or indirectly partnership items of the partnership.

(3) Partnership item

The term “partnership item” means, with respect to a partnership, any item required to be taken into account for the partnership’s taxable year under any provision of subtitle A to the extent regulations prescribed by the Secretary provide that, for purposes of this subtitle, such item is more appropriately determined at the partnership level than at the partner level.

(4) Nonpartnership item

The term “nonpartnership item” means an item which is (or is treated as) not a partnership item.

(5) Affected item

The term “affected item” means any item to the extent such item is affected by a partnership item.

(6) Computational adjustment

The term “computational adjustment” means the change in the tax liability of a partner which properly reflects the treatment under this subchapter of a partnership item. All adjustments required to apply the results of a proceeding with respect to a partnership under this subchapter to an indirect partner shall be treated as computational adjustments.

(7) Tax matters partner

The tax matters partner of any partnership is—

(A) the general partner designated as the tax matters partner as provided in regulations, or

(B) if there is no general partner who has been so designated, the general partner having the largest profits interest in the partnership at the close of the taxable year involved (or, where there is more than 1 such partner, the 1 of such partners whose name would appear first in an alphabetical listing).

If there is no general partner designated under subparagraph (A) and the Secretary determines that it is impracticable to apply subparagraph (B), the partner selected by the Sec-

retary shall be treated as the tax matters partner. The Secretary shall, within 30 days of selecting a tax matters partner under the preceding sentence, notify all partners required to receive notice under section 6223(a) of the name and address of the person selected.

(8) Notice partner

The term “notice partner” means a partner who, at the time in question, would be entitled to notice under subsection (a) of section 6223 (determined without regard to subsections (b)(2) and (e)(1)(B) thereof).

(9) Pass-thru partner

The term “pass-thru partner” means a partnership, estate, trust, S corporation, nominee, or other similar person through whom other persons hold an interest in the partnership with respect to which proceedings under this subchapter are conducted.

(10) Indirect partner

The term “indirect partner” means a person holding an interest in a partnership through 1 or more pass-thru partners.

(11) 5-percent group

A 5-percent group is a group of partners who for the partnership taxable year involved had profits interests which aggregated 5 percent or more.

(12) Husband and wife

Except to the extent otherwise provided in regulations, a husband and wife who have a joint interest in a partnership shall be treated as 1 person.

(b) Items cease to be partnership items in certain cases

(1) In general

For purposes of this subchapter, the partnership items of a partner for a partnership taxable year shall become nonpartnership items as of the date—

(A) the Secretary mails to such partner a notice that such items shall be treated as nonpartnership items,

(B) the partner files suit under section 6228(b) after the Secretary fails to allow an administrative adjustment request with respect to any of such items,

(C) the Secretary or the Attorney General (or his delegate) enters into a settlement agreement with the partner with respect to such items, or

(D) such change occurs under subsection (e) of section 6223 (relating to effect of Secretary’s failure to provide notice) or under subsection (c) of this section.

(2) Circumstances in which notice is permitted

The Secretary may mail the notice referred to in subparagraph (A) of paragraph (1) to a partner with respect to partnership items for a partnership taxable year only if—

(A) such partner—

(i) has complied with subparagraph (B) of section 6222(b)(1) (relating to notification of inconsistent treatment) with respect to one or more of such items, and

(ii) has not, as of the date on which the Secretary mails the notice, filed a request

for administrative adjustments which would make the partner’s treatment of the item or items with respect to which the partner complied with subparagraph (B) of section 6222(b)(1) consistent with the treatment of such item or items on the partnership return, or

(B)(i) such partner has filed a request under section 6227(d) for administrative adjustment of one or more of such items, and

(ii) the adjustments requested would not make such partner’s treatment of such items consistent with the treatment of such items on the partnership return.

(3) Notice must be mailed before beginning of partnership proceeding

Any notice to a partner under subparagraph (A) of paragraph (1) with respect to partnership items for a partnership taxable year shall be mailed before the day on which the Secretary mails to the tax matters partner a notice of the beginning of an administrative proceeding at the partnership level with respect to such items.

(c) Regulations with respect to certain special enforcement areas

(1) Applicability of subsection

This subsection applies in the case of—

(A) assessments under section 6851 (relating to termination assessments of income tax) or section 6861 (relating to jeopardy assessments of income, estate, gift, and certain excise taxes),

(B) criminal investigations,

(C) indirect methods of proof of income,

(D) foreign partnerships, and

(E) other areas that the Secretary determines by regulation to present special enforcement considerations.

(2) Items may be treated as nonpartnership items

To the extent that the Secretary determines and provides by regulations that to treat items as partnership items will interfere with the effective and efficient enforcement of this title in any case described in paragraph (1), such items shall be treated as nonpartnership items for purposes of this subchapter.

(3) Special rules

The Secretary may prescribe by regulation such special rules as the Secretary determines to be necessary to achieve the purposes of this subchapter in any case described in paragraph (1).

(d) Time for determining partner’s profits interest in partnership

(1) In general

For purposes of section 6223(b) (relating to special rules for partnerships with more than 100 partners) and paragraph (11) of subsection (a) (relating to 5-percent group), the interest of a partner in the profits of a partnership for a partnership taxable year shall be determined—

(A) in the case of a partner whose entire interest in the partnership is disposed of during such partnership taxable year, as of

the moment immediately before such disposition, or

(B) in the case of any other partner, as of the close of the partnership taxable year.

(2) Indirect partners

The Secretary shall prescribe regulations consistent with the principles of paragraph (1) to be applied in the case of indirect partners.

(e) Effect of judicial decisions in certain proceedings

(1) Determinations at partner level

No judicial determination with respect to the income tax liability of any partner not conducted under this subchapter shall be a bar to any adjustment in such partner's income tax liability resulting from—

(A) a proceeding with respect to partnership items under this subchapter, or

(B) a proceeding with respect to items which become nonpartnership items—

(i) by reason of 1 or more of the events described in subsection (b), and

(ii) after the appropriate time for including such items in any other proceeding with respect to nonpartnership items.

(2) Proceedings under section 6228(a)

No judicial determination in any proceeding under subsection (a) of section 6228 with respect to any partnership item shall be a bar to any adjustment in any other partnership item.

(f) Special rule for deductions, losses, and credits of foreign partnerships

Except to the extent otherwise provided in regulations, in the case of any partnership the tax matters partner of which resides outside the United States or the books of which are maintained outside the United States, no deduction, loss, or credit shall be allowable to any partner unless section 6031 is complied with for the partnership's taxable year in which such deduction, loss, or credit arose at such time as the Secretary prescribes by regulations.

(g) Partnership return to be determinative of whether subchapter applies

(1) Determination that subchapter applies

If, on the basis of a partnership return for a taxable year, the Secretary reasonably determines that this subchapter applies to such partnership for such year but such determination is erroneous, then the provisions of this subchapter are hereby extended to such partnership (and its items) for such taxable year and to partners of such partnership.

(2) Determination that subchapter does not apply

If, on the basis of a partnership return for a taxable year, the Secretary reasonably determines that this subchapter does not apply to such partnership for such year but such determination is erroneous, then the provisions of this subchapter shall not apply to such partnership (and its items) for such taxable year or to partners of such partnership.

(Added Pub. L. 97-248, title IV, §402(a), Sept. 3, 1982, 96 Stat. 663; amended Pub. L. 98-369, div. A, title VII, §714(p)(2)(B)-(D), (I), July 18, 1984, 98

Stat. 964, 965; Pub. L. 105-34, title XI, §1141(b), title XII, §§1232(a), 1234(a), Aug. 5, 1997, 111 Stat. 981, 1023, 1024; Pub. L. 105-206, title III, §3507(a), July 22, 1998, 112 Stat. 772; Pub. L. 107-147, title IV, §§416(d)(1)(C), 417(19)(C), Mar. 9, 2002, 116 Stat. 55, 57.)

AMENDMENTS

2002—Subsec. (b)(1)(C). Pub. L. 107-147, §416(d)(1)(C), inserted “or the Attorney General (or his delegate)” after “Secretary”.

Subsec. (b)(2)(B)(i). Pub. L. 107-147, §417(19)(C), substituted “section 6227(d)” for “section 6227(c)”.

1998—Subsec. (a)(7). Pub. L. 105-206 inserted at end “The Secretary shall, within 30 days of selecting a tax matters partner under the preceding sentence, notify all partners required to receive notice under section 6223(a) of the name and address of the person selected.”

1997—Subsec. (a)(1)(B)(i). Pub. L. 105-34, §1234(a), reenacted heading of cl. (i) without change and amended text generally. Prior to amendment, text read as follows: “The term ‘partnership’ shall not include any partnership if—

“(I) such partnership has 10 or fewer partners each of whom is a natural person (other than a nonresident alien) or an estate, and

“(II) each partner's share of each partnership item is the same as his share of every other item.

For purposes of the preceding sentence, a husband and wife (and their estates) shall be treated as 1 partner.”

Subsec. (f). Pub. L. 105-34, §1141(b), substituted “deductions, losses, and” for “losses and” in subsec. heading and “deduction, loss, or” for “loss or” in two places in text.

Subsec. (g). Pub. L. 105-34, §1232(a), added subsec. (g).

1984—Subsec. (a)(9). Pub. L. 98-369, §714(p)(2)(B), substituted “S corporation” for “electing small business corporation”.

Subsec. (b)(2)(B). Pub. L. 98-369, §714(p)(2)(I), substituted section “6227(c)” for “6227(b)”.

Subsec. (d)(1)(A). Pub. L. 98-369, §714(p)(2)(C), amended subpar. (A) generally, substituting “disposed of” and “disposition” for “liquidated, sold, or exchanged” and “liquidation, sale, or exchange”, respectively.

Subsec. (f). Pub. L. 98-369, §714(p)(2)(D), substituted “such loss or credit” for “such deduction or credit”.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by section 416(d)(1)(C) of 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 OF 1998 AMENDMENT

Pub. L. 105-206, title III, §3507(b), July 22, 1998, 112 Stat. 772, provided that: “The amendment made by this section [amending this section] shall apply to selections of tax matters partners made by the Secretary of the Treasury after the date of the enactment of this Act [July 22, 1998].”

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 1141(b) of Pub. L. 105-34 applicable to taxable years beginning after Aug. 5, 1997, see section 1141(c) of Pub. L. 105-34, set out as a note under section 6031 of this title.

Pub. L. 105-34, title XII, §1232(b), Aug. 5, 1997, 111 Stat. 1023, 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].”

Pub. L. 105-34, title XII, §1234(b), Aug. 5, 1997, 111 Stat. 1024, 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 Respon-

sibility 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

Pub. L. 97-248, title IV, § 406, Sept. 3, 1982, 96 Stat. 670, 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