

the partner's return is consistent with the treatment of the item on the statement furnished to the partner by the partnership, and

(B) elects to have this paragraph apply with respect to that item.

(d) Final decision on certain positions not binding on partnership

Any final decision with respect to an inconsistent position identified under subsection (c) in a proceeding to which the partnership is not a party shall not be binding on the partnership.

(e) Addition to tax for failure to comply with section

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

(Added Pub. L. 114-74, title XI, §1101(c)(1), Nov. 2, 2015, 129 Stat. 626.)

PRIOR PROVISIONS

A prior section 6222, added Pub. L. 97-248, title IV, §402(a), Sept. 3, 1982, 96 Stat. 648; amended Pub. L. 99-514, title XV, §1503(c)(1), Oct. 22, 1986, 100 Stat. 2743; Pub. L. 101-239, title VII, §7721(c)(7), Dec. 19, 1989, 103 Stat. 2400, required partner's return to be consistent with partnership return or Secretary to be notified of inconsistency, prior to repeal by Pub. L. 114-74, title XI, §1101(a), Nov. 2, 2015, 129 Stat. 625.

EFFECTIVE DATE

Section applicable to returns filed for partnership taxable years beginning after Dec. 31, 2017, with certain exceptions, see section 1101(g) of Pub. L. 114-74, set out as a note under section 6221 of this title.

§ 6223. Partners bound by actions of partnership

(a) Designation of partnership representative

Each partnership shall designate (in the manner prescribed by the Secretary) a partner (or other person) with a substantial presence in the United States as the partnership representative who shall have the sole authority to act on behalf of the partnership under this subchapter. In any case in which such a designation is not in effect, the Secretary may select any person as the partnership representative.

(b) Binding effect

A partnership and all partners of such partnership shall be bound—

(1) by actions taken under this subchapter by the partnership, and

(2) by any final decision in a proceeding brought under this subchapter with respect to the partnership.

(Added Pub. L. 114-74, title XI, §1101(c)(1), Nov. 2, 2015, 129 Stat. 627.)

PRIOR PROVISIONS

Prior sections 6223 and 6224 were repealed by Pub. L. 114-74, title XI, §1101(a), (g), Nov. 2, 2015, 129 Stat. 625, 638, applicable to returns filed for partnership taxable years beginning after Dec. 31, 2017.

Section 6223, added Pub. L. 97-248, title IV, §402(a), Sept. 3, 1982, 96 Stat. 649, related to notice to partners of proceedings.

Section 6224, added Pub. L. 97-248, title IV, §402(a), Sept. 3, 1982, 96 Stat. 651; amended Pub. L. 107-147, title IV, §416(d)(1)(A), Mar. 9, 2002, 116 Stat. 55, related to partner participation in administrative proceedings, waiver of partner's rights, and settlement agreements.

EFFECTIVE DATE

Section applicable to returns filed for partnership taxable years beginning after Dec. 31, 2017, with certain exceptions, see section 1101(g) of Pub. L. 114-74, set out as a note under section 6221 of this title.

PART II—PARTNERSHIP ADJUSTMENTS

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| Sec. 6225. | Partnership adjustment by Secretary. |
| 6226. | Alternative to payment of imputed underpayment by partnership. |
| 6227. | Administrative adjustment request by partnership. |

§ 6225. Partnership adjustment by Secretary

(a) In general

In the case of any adjustment by the Secretary in the amount of any item of income, gain, loss, deduction, or credit of a partnership, or any partner's distributive share thereof—

(1) the partnership shall pay any imputed underpayment with respect to such adjustment in the adjustment year as provided in section 6232, and

(2) any adjustment that does not result in an imputed underpayment shall be taken into account by the partnership in the adjustment year—

(A) except as provided in subparagraph (B), as a reduction in non-separately stated income or an increase in non-separately stated loss (whichever is appropriate) under section 702(a)(8), or

(B) in the case of an item of credit, as a separately stated item.

(b) Determination of imputed underpayments

For purposes of this subchapter—

(1) In general

Except as provided in subsection (c), any imputed underpayment with respect to any partnership adjustment for any reviewed year shall be determined—

(A) by netting all adjustments of items of income, gain, loss, or deduction and multiplying such net amount by the highest rate of tax in effect for the reviewed year under section 1 or 11,

(B) by treating any net increase or decrease in loss under subparagraph (A) as a decrease or increase, respectively, in income, and

(C) by taking into account any adjustments to items of credit as an increase or decrease, as the case may be, in the amount determined under subparagraph (A).

(2) Adjustments to distributive shares of partners not netted

In the case of any adjustment which reallocates the distributive share of any item from one partner to another, such adjustment shall be taken into account under paragraph (1) by disregarding—

(A) any decrease in any item of income or gain, and

(B) any increase in any item of deduction, loss, or credit.

(c) Modification of imputed underpayments

(1) In general

The Secretary shall establish procedures under which the imputed underpayment

amount may be modified consistent with the requirements of this subsection.

(2) Amended returns of partners

(A) In general

Such procedures shall provide that if—

(i) one or more partners file returns (notwithstanding section 6511) for the taxable year of the partners which includes the end of the reviewed year of the partnership,

(ii) such returns take into account all adjustments under subsection (a) properly allocable to such partners (and for any other taxable year with respect to which any tax attribute is affected by reason of such adjustments), and

(iii) payment of any tax due is included with such return,

then the imputed underpayment amount shall be determined without regard to the portion of the adjustments so taken into account.

(B) Reallocation of distributive share

In the case of any adjustment which re-allocates the distributive share of any item from one partner to another, paragraph (2) shall apply only if returns are filed by all partners affected by such adjustment.

(3) Tax-exempt partners

Such procedures shall provide for determining the imputed underpayment without regard to the portion thereof that the partnership demonstrates is allocable to a partner that would not owe tax by reason of its status as a tax-exempt entity (as defined in section 168(h)(2)).

(4) Modification of applicable highest tax rates

(A) In general

Such procedures shall provide for taking into account a rate of tax lower than the rate of tax described in subsection (b)(1)(A) with respect to any portion of the imputed underpayment that the partnership demonstrates is allocable to a partner which—

- (i) is a C corporation, or
- (ii) in the case of a capital gain or qualified dividend, is an individual.

In no event shall the lower rate determined under the preceding sentence be less than the highest rate in effect with respect to the income and taxpayer described in clause (i) or clause (ii), as the case may be. For purposes of clause (ii), an S corporation shall be treated as an individual.

(B) Portion of imputed underpayment to which lower rate applies

(i) In general

Except as provided in clause (ii), the portion of the imputed underpayment to which the lower rate applies with respect to a partner under subparagraph (A) shall be determined by reference to the partners' distributive share of items to which the imputed underpayment relates.

(ii) Rule in case of varied treatment of items among partners

If the imputed underpayment is attributable to the adjustment of more than 1

item, and any partner's distributive share of such items is not the same with respect to all such items, then the portion of the imputed underpayment to which the lower rate applies with respect to a partner under subparagraph (A) shall be determined by reference to the amount which would have been the partner's distributive share of net gain or loss if the partnership had sold all of its assets at their fair market value as of the close of the reviewed year of the partnership.

(5) Certain passive losses of publicly traded partnerships

(A) In general

In the case of a publicly traded partnership (as defined in section 469(k)(2)), such procedures shall provide—

(i) for determining the imputed underpayment without regard to the portion thereof that the partnership demonstrates is attributable to a net decrease in a specified passive activity loss which is allocable to a specified partner, and

(ii) for the partnership to take such net decrease into account as an adjustment in the adjustment year with respect to the specified partners to which such net decrease relates.

(B) Specified passive activity loss

For purposes of this paragraph, the term "specified passive activity loss" means, with respect to any specified partner of such publicly traded partnership, the lesser of—

- (i) the passive activity loss of such partner which is separately determined with respect to such partnership under section 469(k) with respect to such partner's taxable year in which or with which the reviewed year of such partnership ends, or
- (ii) such passive activity loss so determined with respect to such partner's taxable year in which or with which the adjustment year of such partnership ends.

(C) Specified partner

For purposes of this paragraph, the term "specified partner" means any person if such person—

- (i) is a partner of the publicly traded partnership referred to in subparagraph (A),
- (ii) is described in section 469(a)(2), and
- (iii) has a specified passive activity loss with respect to such publicly traded partnership,

with respect to each taxable year of such person which is during the period beginning with the taxable year of such person in which or with which the reviewed year of such publicly traded partnership ends and ending with the taxable year of such person in which or with which the adjustment year of such publicly traded partnership ends.

(6) Other procedures for modification of imputed underpayment

The Secretary may by regulations or guidance provide for additional procedures to modify imputed underpayment amounts on the

basis of such other factors as the Secretary determines are necessary or appropriate to carry out the purposes of this subsection.

(7) Year and day for submission to Secretary

Anything required to be submitted pursuant to paragraph (1) shall be submitted to the Secretary not later than the close of the 270-day period beginning on the date on which the notice of a proposed partnership adjustment is mailed under section 6231 unless such period is extended with the consent of the Secretary.

(8) Decision of Secretary

Any modification of the imputed underpayment amount under this subsection shall be made only upon approval of such modification by the Secretary.

(d) Definitions

For purposes of this subchapter—

(1) Reviewed year

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

(2) Adjustment year

The term “adjustment year” means the partnership taxable year in which—

(A) in the case of an adjustment pursuant to the decision of a court in a proceeding brought under section 6234, such decision becomes final,

(B) in the case of an administrative adjustment request under section 6227, such administrative adjustment request is made, or

(C) in any other case, notice of the final partnership adjustment is mailed under section 6231.

(Added Pub. L. 114-74, title XI, §1101(c)(1), Nov. 2, 2015, 129 Stat. 628; amended Pub. L. 114-113, div. Q, title IV, §411(a), Dec. 18, 2015, 129 Stat. 3121.)

PRIOR PROVISIONS

A prior section 6225, added Pub. L. 97-248, title IV, §402(a), Sept. 3, 1982, 96 Stat. 652; amended Pub. L. 105-34, title XII, §1239(a), Aug. 5, 1997, 111 Stat. 1027, allowing assessments to be made only after partnership level proceedings were completed, was repealed by Pub. L. 114-74, title XI, §1101(a), Nov. 2, 2015, 129 Stat. 625.

AMENDMENTS

2015—Subsec. (c)(4)(A)(i). Pub. L. 114-113, §411(a)(1), struck out “in the case of ordinary income,” before “is a C corporation”.

Subsec. (c)(5) to (8). Pub. L. 114-113, §411(a)(2), added par. (5) and redesignated former pars. (5) to (7) as (6) to (8), respectively.

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114-113 effective as if included in section 1101 of Pub. L. 114-74, see section 411(e) of Pub. L. 114-113, set out as a note under section 6031 of this title.

EFFECTIVE DATE

Section applicable to returns filed for partnership taxable years beginning after Dec. 31, 2017, with certain exceptions, see section 1101(g) of Pub. L. 114-74, set out as a note under section 6221 of this title.

§ 6226. Alternative to payment of imputed underpayment by partnership

(a) In general

If the partnership—

(1) not later than 45 days after the date of the notice of final partnership adjustment, elects the application of this section with respect to an imputed underpayment, and

(2) at such time and in such manner as the Secretary may provide, furnishes to each partner of the partnership for the reviewed year and to the Secretary a statement of the partner’s share of any adjustment to income, gain, loss, deduction, or credit (as determined in the notice of final partnership adjustment),

section 6225 shall not apply with respect to such underpayment and each such partner shall take such adjustment into account as provided in subsection (b). The election under paragraph (1) shall be made in such manner as the Secretary may provide and, once made, shall be revocable only with the consent of the Secretary.

(b) Adjustments taken into account by partner

(1) Tax imposed in year of statement

Each partner’s tax imposed by chapter 1 for the taxable year which includes the date the statement was furnished under subsection (a) shall be increased by the aggregate of the adjustment amounts determined under paragraph (2) for the taxable years referred to therein.

(2) Adjustment amounts

The adjustment amounts determined under this paragraph are—

(A) in the case of the taxable year of the partner which includes the end of the reviewed year, the amount by which the tax imposed under chapter 1 would increase if the partner’s share of the adjustments described in subsection (a) were taken into account for such taxable year, plus

(B) in the case of any taxable year after the taxable year referred to in subparagraph (A) and before the taxable year referred to in paragraph (1), the amount by which the tax imposed under chapter 1 would increase by reason of the adjustment to tax attributes under paragraph (3).

(3) Adjustment of tax attributes

Any tax attribute which would have been affected if the adjustments described in subsection (a) were taken into account for the taxable year referred to in paragraph (2)(A) shall—

(A) in the case of any taxable year referred to in paragraph (2)(B), be appropriately adjusted for purposes of applying such paragraph, and

(B) in the case of any subsequent taxable year, be appropriately adjusted.

(c) Penalties and interest

(1) Penalties

Notwithstanding subsections (a) and (b), any penalties, additions to tax, or additional amount shall be determined as provided under section 6221 and the partners of the partnership for the reviewed year shall be liable for any such penalty, addition to tax, or additional amount.

(2) Interest

In the case of an imputed underpayment with respect to which the application of this