

APPENDIX

APPENDIX A

NOT FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

WEST VENTURES, L.P., FKA Sleiman
Ventures, L.P.; ANTHONY T. SLEIMAN, Tax
Matters Partner,

No. 19-71134

Petitioners-Appellants,

Tax Ct. No. 24683-10

v.

MEMORANDUM*

COMMISSIONER OF INTERNAL
REVENUE,

Respondent-Appellee.

Appeal from a Decision of the United States Tax
Court

Submitted July 10, 2020** Seattle, Washington

Before: CLIFTON, D.M. FISHER,*** and M. SMITH,
Circuit Judges.¹

West Ventures, L.P. (West Ventures) appeals the tax court's order and decision in favor of the Commissioner. West Ventures argues that the tax court lacked subject matter jurisdiction to sustain the Commissioner's disallowance of a \$62,370,000 short-term capital loss (Loss) declared in its tax filing (Form 1065) for the 1999 tax year. We have jurisdiction under 26 U.S.C. § 7482(a).

The tax court's rulings on jurisdictional issues are reviewed *de novo*. *See Gorospe v. Comm'r*, 451 F.3d 966, 968 (9th Cir. 2006) (reviewing the tax court's dismissal for lack of subject matter jurisdiction *de novo*); *see also Taproot Admin. Servs., Inc. v. Comm'r*, 679 F.3d 1109, 1114 (9th Cir. 2012) (reviewing the tax court's grant of summary judgment *de novo*). Because the Internal Revenue Code, its associated regulations, and our case law are clear that the Loss was a partnership item of West Ventures, the final

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See Fed. R. App. P.* 34(a)(2).

*** The Honorable D. Michael Fisher, United States Circuit Judge for the U.S. Court of Appeals for the Third Circuit, sitting by designation.

partnership administrative adjustment (FPAA) was properly issued to West Ventures, the tax court had jurisdiction, and we affirm.

¹

West Ventures' main argument on appeal is that, in seeking to disallow the Loss, the Commissioner commenced proceedings against the wrong entity, and thus the tax court lacked jurisdiction. In particular, West Ventures argues that, according to Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), 26 U.S.C. §§ 6221–6234 (2000), the Commissioner's FPAA should have been issued to Sleiman Ventures (Two) LP (Sleiman Two), which is 90% owned by West Ventures. In statutory terms, West Ventures' argument is that the Loss is a "partnership item" of Sleiman Two, not West Ventures. *See* 26 U.S.C. § 6226(f) (2000) (the tax court has "jurisdiction to determine all partnership items" of the partnership to which the FPAA relates).

Pursuant to TEFRA, a partnership item is one that is "required to be taken into account for the partnership's taxable year under any [income tax]

¹ We recognize that the tax court appears to have concluded that the Loss was an "affected item" of Sleiman Two. However, "[d]ecisions of the tax court are reviewed on the same basis as decisions from civil bench trials in the district court." *MK Hillside Partners v. Comm'r*, 826 F.3d 1200, 1203 (9th Cir. 2016) (quoting *DHL Corp. & Subsidiaries v. Comm'r*, 285 F.3d 1210, 1216 (9th Cir. 2002)). Accordingly, the tax court's decision may be affirmed on any ground supported by the record, even if not relied upon by the tax court. *See Cassirer v. Thyssen-Bornemisza Collection Found.*, 862 F.3d 951, 974 (9th Cir. 2017).

provision” and that “is more appropriately determined at the partnership level than at the partner level.” 26 U.S.C. § 6231(a)(3) (2000). When identifying a partnership item, “[t]he ‘critical element’ is that the partnership is required to make the determination.” *Greenwald v. Comm'r*, 142 T.C. 308, 313–314 (2014) (quoting 26 C.F.R. § 301.6231(a)(3)-1(c)(1)). “Partnership items, such as a partnership’s income, gain, loss, deductions, or credits, are items that must be taken into account on a partner’s federal income tax return and that are determined by the Treasury Secretary to be ‘more appropriately determined at the partnership level than at the partner level.’” *Candyce Martin 1999 Irrevocable Tr. v. United States*, 739 F.3d 1204, 1210 (9th Cir. 2014) (citation omitted) (quoting 26 U.S.C. § 6231(a)(3) (2000)). “[P]artnership losses . . . are . . . partnership items’ of the partnerships that initially reported the losses.” *Russian Recovery Fund Ltd. v. United States*, 101 Fed. Cl. 498, 505 (2011) (quoting *Sente Inv. Club P'ship v. Comm'r*, 95 T.C. 243, 247 (1990)), *aff'd*, 851 F.3d 1253 (Fed. Cir. 2017). Moreover, “the IRS must adjust a partnership item at the partnership level that first produces the loss (or gain) in question.” *Id.*

Here, it is undisputed that the Loss was first reported in West Ventures’ Form 1065, and it was not reported in Sleiman Two’s Form 1065 for the 1999 tax year. This makes sense, because the Loss was produced by West Ventures’ redemption of its partnership interest in Sleiman Two. Therefore, the FPAA, to the extent it disallowed the Loss, was properly issued to West Ventures, the entity that first produced and reported it.

In *Candyce Martin*, we specifically rejected West Ventures' argument in analogous circumstances. Analyzing a tax shelter structure almost identical to the one at issue here, we observed that "the IRS could have issued an FPAA" to the partnership, like West Ventures here, that claimed losses stemming from its redemption of interests in another partnership (here, Sleiman Two). 739 F.3d at 1212. We repeatedly referred to those losses, which were analogous to the Loss, as partnership items of the redeeming entity—in this case, West Ventures. *Id.* at 1210–12. And we rejected the idea that the losses could have originated with the non-reporting partnership, which in this case was Sleiman Two. *Id.* at 1213. Accordingly, *Candyce Martin* establishes that, for the purposes of disallowing the Loss, the FPAA was properly issued to West Ventures.

West Ventures' secondary argument, that the FPAA was untimely, depends on the conclusion that the Loss was not a partnership item of West Ventures. But, as described above, we conclude that the Loss was a partnership item of West Ventures. Accordingly, without ruling upon the full extent of the scope of the Form 872-P agreements extending the Commissioner's deadline to make assessments related to West Ventures, the FPAA was timely here.

AFFIRMED.

APPENDIX B

UNITED STATES TAX COURT
WASHINGTON, DC 20217

WEST VENTURES, L.P. F.K.A. SLEIMAN)
VENTURES, L.P., ANTHONY T. SLEIMAN, A)
PARTNER OTHER THAN THE TAX MATTERS
PARTNER,)
)
Petitioner(s),)
)
v. Docket No. 24683-10.)
COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent)
)
)

ORDER

On June 8, 2010, respondent sent a notice of final partnership administrative adjustment (FPAA), relating to 1999 (year in issue), to West Ventures, L.P., (West Ventures) and its partners. On November 8, 2010, Anthony T. Sleiman, a partner other than the tax matters partner, filed a petition with the Court for readjustment of West Ventures' partnership items. Peter D. Sleiman, on December 10, 2010, filed a notice of election to participate with the Court. On March 27,

2013, the Court filed respondent's Motion for Partial Summary Judgment. The Court, on May 8, 2013, filed petitioner's and participant Peter D. Sleiman's Objection to Respondent's Motion for Partial Summary Judgment. On that same day, the Court filed petitioner's Motion for Summary Judgment, and petitioner's Memorandum in Support of Petitioner's Motion for Summary Judgment. On June 13, 2013, the Court filed respondent's Response to Petitioner's Motion for Summary Judgment. The Court, on July 15, 2013, filed petitioner's Reply to Respondent's Response to Petitioner's Motion for Summary Judgment. Unless otherwise indicated, all section references are to the Internal Revenue Code relating to the year in issue, and all Rule references are to the Tax Court Rules of Practice and Procedure.

West Ventures, a Nevada limited partnership, was organized in June 1998. West Ventures, Inc., a Nevada corporation and the general partner of West Ventures during the year in issue, held a 1% interest. Peter D. Sleiman, Anthony T. Sleiman, Joseph E. Sleiman, and Eli T. Sleiman Jr. (the Sleimans) were limited partners in West Ventures during the year in issue, and each held a 24.75% interest.

Sleiman Ventures (Two) L.P. (Sleiman Two), a Delaware limited partnership, was formed on June 25, 1999. West Ventures, Inc., was the general partner of Sleiman Two at formation, and held a 1% interest. Sleiman Family Trust I was a limited partner in Sleiman Two, with a 9% interest. FX Capital LLC, FX Capital (Two) LLC, FX Capital (Three) LLC, and FX Capital (Four) LLC (the FX LLCs), were the other initial limited partners of Sleiman Two, each holding a 22.5% interest.

The FX LLCs were each owned, individually, by one of the Sleimans. The FX LLCs each entered into foreign currency digital options on the Japanese Yen against the U.S. Dollar (the options). The FX LLCs, collectively, paid \$70,000,000 to acquire long options and received \$69,300,000 for offsetting short options. The FX LLCs, on July 20, 1999, contributed the options to Sleiman Two in exchange for limited partnership interests in Sleiman Two. On December 29, 1999, the FX LLCs contributed their interests in Sleiman Two to West Ventures, after which West Ventures held a 90% limited partnership interest in Sleiman Two.

On October 18, 2000, Sleiman Two filed a Form 1065, U.S. Return of Partnership Income, relating to its tax year beginning on June 25, 1999 and ending on December 31, 1999. Sleiman Two reported a \$700,000 short-term capital loss relating to the expiration of the options on Schedule D, Capital Gains and Losses, of its Form 1065. Sleiman Two issued a Schedule K-1 to West Ventures, relating to the year in issue, reporting capital contributions of \$630,000 and a \$630,000 loss relating to West Ventures' allocable share of the loss relating to the options' expiration.

West Ventures, on October 16, 2000, filed a Form 1065, relating to the year in issue. On Schedule D, West Ventures reported a basis of \$62,370,000 in Sleiman Two and reported its interest in Sleiman Two as worthless, resulting in a \$62,370,000 short-term capital loss. Additionally, West Ventures reported a \$630,000 flowthrough loss from Sleiman Two. Between 2003 and 2009, West Ventures, Inc., the tax matters partner for West Ventures, executed seven Forms 872-P, Consent to Extend the Time to Assess

Tax Attributable to Partnership Items, relating to West Ventures' partnership items. The most recent of those forms extended the period for assessment, relating to West Venture partnership items, to January 31, 2011. On the June 8, 2010 FPAA issued to West Ventures, respondent disallowed the \$62,370,000 short-term capital loss relating to West Ventures' worthless interest in Sleiman Two and the \$630,000 flowthrough loss relating to Sleiman Two. Respondent has conceded that petitioner is entitled to the \$630,000 loss.

The Court has jurisdiction to determine, in a single partnership-level proceeding, all partnership items; the proper allocation of those partnership items among the partners; and the applicability of any penalty, addition to tax, or additional amount that relates to an adjustment of a partnership item. See sec. 6226. The Court's jurisdiction over a partnership action is predicated upon the Commissioner mailing a valid FPAA to the partnership's tax matters partner and the timely filing of a petition by the tax matters partner or other eligible partner. See secs. 6223(a)(2), 6226(a), (b); Rule 240(c); Seneca, Ltd. v. Commissioner, 92 T.C. 363,365 (1989), aff'd without published opinion, 899 F.2d 1225 (9th Cir. 1990).

Petitioner concedes that it was not entitled to the worthlessness loss it claimed relating to its interest in Sleiman Two. Petitioner contends, however, that the FPAA issued by respondent was invalid because it adjusts partnership items of Sleiman Two, rather than West Ventures' partnership items. Respondent is required to make all determinations relating to partnership items at the partnership level. See sec. 6221. A partner's basis in a partnership is an affected

item to the extent it is not a partnership item. See sec. 301.623 1(a)(5)-1(b) Proced. & Admin. Regs. When identifying a partnership item, “[t]he ‘critical element’ is that the partnership is required to make the determination.” See Greenwald v. Commissioner, 142 T.C. 308, 313-314 (2014). Sleiman Two did not make a section 754 election, and thus was not required to maintain records of its partners’ outside bases. See id. Accordingly, West Ventures’ outside basis in Sleiman Two was not a partnership item of Sleiman Two, and respondent was not required to issue an FPAA to Sleiman Two.

Petitioner further contends that its outside basis in Sleiman Two is an affected item of Sleiman Two, and therefore, any adjustment must be assessed directly against the indirect partners through computational adjustments. Deficiency proceedings, or a TEFRA partnership-level proceeding relating to a tiered partnership, are generally not required to determine affected items following a TEFRA partnership-level proceeding. See secs. 6230(a)(1), 6231(a)(6). There was no Sleiman Two TEFRA proceeding prior to respondent issuing an FPAA to West Ventures. Furthermore, a partner-level proceeding (i.e., a TEFRA partnership-level proceeding relating to a tiered partnership) is required to adjust affected items when a partner-level determination must be made. See sec. 6230(a)(2)(A)(i). West Ventures’ outside basis in Sleiman Two can be affected by partner specific facts (e.g., litigation costs incurred by West Ventures). See Greenwald v. Commissioner, 142 T.C. at 316. “Determining that a partner did not incur such a cost is just as much a partner-level determination.” See id. Accordingly, respondent correctly issued an FPAA to

West Ventures to adjust West Ventures' outside basis in Sleiman Two.

Pursuant to Rule 121, a party may move for summary judgment if there is no genuine issue as to any material fact. Respondent has established that no genuine issue of material fact exists and that he is entitled to judgment as a matter of law. See Sundstrand Corp. v. Commissioner, 98 T.C. 518,520 (1992), affd, 17 F.3d 965 (7th Cir. 1994). Accordingly, partial summary judgment in favor of respondent is appropriate. Upon due consideration of the foregoing, it is

ORDERED that petitioner's Motion for Summary Judgment, filed May 8, 2013, is denied. It is further

ORDERED that respondent's Motion for Partial Summary Judgment, filed March 27, 2013, is granted. It is further

ORDERED that the parties' shall, on or before March 28, 2016, file a joint status report as to the then present status of this case.

(Signed) Maurice B. Foley Chief Judge

Dated: Washington, D.C.

September 28, 2015

APPENDIX C

UNITED STATES TAX COURT
WASHINGTON, DC 20217

WEST VENTURES, L.P. F.K.A. SLEIMAN)
VENTURES, L.P., ANTHONY T. SLEIMAN,))
TAX MATTERS PARTNER,))
Petitioner(s),))
V.))
Docket No. 24683-10.)
COMMISSIONER OF INTERNAL)
REVENUE,))
Respondent))

ORDER AND DECISION

Pending before the Court is petitioner's Motion for Partial Summary Judgment and first supplement, filed December 8, 2016. On October 22, 2018, the parties contacted the Court to discuss the status of this case. As discussed during the conference call, the hearing scheduled for October 29, 2018, on petitioner's Motion for Partial Summary Judgment and first supplement was canceled. By Order dated October 22, 2018, jurisdiction was retained by this Division of the Court, and the parties were directed to file a motion for entry of decision or a joint status report on or before

November 28, 2018. On December 12, 2018, the parties filed a joint Motion for Entry of Decision. Therein, the parties request the Court to enter a decision in this case pursuant to the Court's Order, dated September 28, 2015, and the parties' Stipulation of Settled Issues, filed November 29, 2018. The parties attached a proposed decision document to the motion for entry of decision. The proposed decision reflects that the Court sustains some of the determinations made in the Notice of Final Partnership Administrative Adjustment (FPAA), that respondent concedes the imposition of penalties, and that petitioner maintains its position that the Court lacks subject matter jurisdiction with respect to its decision in this matter. Because the Court's September 28, 2015 Order and the parties' Stipulation of Settled Issues cover all of the issues in dispute in this case, the Court will enter a decision in accordance with the proposed decision attached to the motion. Upon due consideration and for cause, it is

ORDERED that petitioner's Motion for Summary Judgment, as supplemented, filed December 8, 2016, is denied as moot. It is further

ORDERED that the Motion for Entry of Decision, filed December 12, 2018, is granted. It is further

ORDERED AND DECIDED that pursuant to the determination of the Court as set forth in its Order, dated September 28, 2015, and the Stipulation of Settled Issues, filed November 29, 2018, the following statement shows the adjustments to the partnership items of West Ventures, L.P. for the taxable year 1999:

| <u>Partnership Item</u> | <u>As Reported</u> | <u>As Determined</u> |
|-------------------------|--------------------|----------------------|
| Portfolio Income | \$201 | \$201 |
| (Loss) Interest | | |
| Income | | |
| Portfolio Income | 378,353 | 378,353 |
| (Loss) Ordinary | | |
| Dividends | | |
| Portfolio Income | (62,229,911) | 140,089 |
| (Loss) Net | | |
| Short-Term | | |
| Capital Gain | | |
| (Loss) | | |
| Portfolio Income | 62,132,935 | 62,132,935 |
| (Loss) Net Long-Term | | |
| Capital Gain | | |
| (Loss) - 28% | | |
| Deductions Related | 5,346 | 5,346 |
| to Portfolio Income | | |
| Interest Expense | 3,809 | 3,809 |
| on Investment Debts | | |
| Investment Income | 378,554 | 378,554 |
| Included in | | |
| Portfolio Income | | |
| Invest Expenses | 5,346 | 5,346 |
| Included in | | |
| Deductions Related | | |
| to Portfolio Income | | |

| | | |
|-------------------------------|------------|------------|
| Tax-Exempt Interest Income | 927,719 | 927,719 |
| Distributions of Money | 19,984,739 | 19,984,739 |

It is further

ORDERED AND DECIDED that there are no accuracy-related penalties applicable under I.R.C. § 6662 (including under I.R.C. §§ 6662(a), 6662(b)(1), 6662(b)(2), 6662(b)(3), 6662(c), 6662(d), 6662(e), and 6662(h)) on any underpayment attributable to adjustments to the partnership and affected items of West Ventures, L.P.

(Signed) L. Paige Marvel Judge

ENTERED: FEB 07 2019

APPENDIX D

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–614 applicable with respect to gifts made after Dec. 31, 1970, see section 102(e) of Pub. L. 91–614, set out as a note under section 2501 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 101(j)(43), (44) of Pub. L. 91–172 effective Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as an Effective Date note under section 4940 of this title.

Amendment by section 960(a) of Pub. L. 91–172 effective one year after Dec. 30, 1969, see section 962(e) of Pub. L. 91–172, set out as an Effective Date note under section 7463 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6212, 6234, 7436, 7463 of this title.

§ 6215. Assessment of deficiency found by Tax Court

(a) General rule

If the taxpayer files a petition with the Tax Court, the entire amount redetermined as the deficiency by the decision of the Tax Court which has become final shall be assessed and shall be paid upon notice and demand from the Secretary. No part of the amount determined as a deficiency by the Secretary but disallowed as such by the decision of the Tax Court which has become final shall be assessed or be collected by levy or by proceeding in court with or without assessment.

(b) Cross references

(1) For assessment or collection of the amount of the deficiency determined by the Tax Court pending appellate court review, see section 7485.

(2) For dismissal of petition by Tax Court as affirmation of deficiency as determined by the Secretary, see section 7459(d).

(3) For decision of Tax Court that tax is barred by limitation as its decision that there is no deficiency, see section 7459(e).

(4) For assessment of damages awarded by Tax Court for instituting proceedings merely for delay, see section 6673.

(5) For treatment of certain deficiencies as having been paid, in connection with sale of

surplus war-built vessels, see section 9(b)(8) of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1742).

(6) For rules applicable to Tax Court proceedings, see generally subchapter C of chapter 76.

(7) For extension of time for paying amount determined as deficiency, see section 6161(b).

(Aug. 16, 1954, ch. 736, 68A Stat. 773; Pub. L. 94-455, title XIX, § 1906(a)(16), (b)(13)(A), Oct. 4, 1976, 90 Stat. 1825, 1834; Pub. L. 99-514, title XIV, § 1404(c)(2), Oct. 22, 1986, 100 Stat. 2714.)

AMENDMENTS

1986—Subsec. (b)(7), (8). Pub. L. 99-514 redesignated par. (8) as (7) and struck out former par. (7) which read as follows: “For proration of deficiency to installments, see section 6152(c).”

1976—Pub. L. 94-455, § 1906(b)(13)(A), struck out “or his delegate” after “Secretary” wherever appearing.

Subsec. (b)(5). Pub. L. 94-455, § 1906(a)(16), struck out “60 Stat. 48;” before “50 U.S.C. App. 1742”.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, see section 1404(d) of Pub. L. 99-514, set out as a note under section 643 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7436, 7481 of this title.

§ 6216. Cross references

- (1) For procedures relating to receivership proceedings, see subchapter B of chapter 70.
- (2) For procedures relating to jeopardy assessments, see subchapter A of chapter 70.
- (3) For procedures relating to claims against transferees and fiduciaries, see chapter 71.
- (4) For procedure relating to partnership items, see subchapter C.

(Aug. 16, 1954, ch. 736, 68A Stat. 773; Pub. L. 96-589, § 6(i)(9), Dec. 24, 1980, 94 Stat. 3411; Pub. L. 97-248, title IV, § 402(c)(3), Sept. 3, 1982, 96 Stat. 667.)

AMENDMENTS

1982—Par. (4). Pub. L. 97-248 added par. (4).
 1980—Par. (1). Pub. L. 96-589 struck out reference to bankruptcy proceedings.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-248 applicable to partnership taxable years beginning after Sept. 3, 1982, with provision for the applicability of the amendment to any partnership taxable year ending after Sept. 3, 1982, if the partnership, each partner, and each indirect partner requests such application and the Secretary of the Treasury or his delegate consents to such application, see section 407(a)(1), (3) of Pub. L. 97-248, set out as an Effective Date note under section 6221 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-589 effective Oct. 1, 1979, but not applicable to proceedings under Title 11, Bankruptcy, commenced before Oct. 1, 1979, see section 7(e) of Pub. L. 96-589, set out as a note under section 108 of this title.

Subchapter C—Tax Treatment of Partnership Items

Sec.

- 6221. Tax treatment determined at partnership level.
- 6222. Partner's return must be consistent with partnership return or Secretary notified of inconsistency.
- 6223. Notice to partners of proceedings.
- 6224. Participation in administrative proceedings; waivers; agreements.
- 6225. Assessments made only after partnership level proceedings are completed.
- 6226. Judicial review of final partnership administrative adjustments.
- 6227. Administrative adjustment requests.
- 6228. Judicial review where administrative adjustment request is not allowed in full.
- 6229. Period of limitations for making assessments.
- 6230. Additional administrative provisions.
- 6231. Definitions and special rules.
- [6232. Repealed.]
- 6233. Extension to entities filing partnership returns, etc.
- 6234. Declaratory judgment relating to treatment of items other than partnership items with respect to an oversheltered return.

AMENDMENTS

1997—Pub. L. 105–34, title XII, § 1231(c), Aug. 5, 1997, 111 Stat. 1023, added item 6234.

1988—Pub. L. 100–418, title I, § 1941(b)(3)(D), Aug. 23, 1988, 102 Stat. 1324, struck out item 6232 “Extension of subchapter to windfall profit tax”.

1984—Pub. L. 98–369, div. A, title VII, § 714(p)(2)(E), July 18, 1984, 98 Stat. 965, added item 6233.

1982—Pub. L. 97–248, title IV, § 402(a), Sept. 3, 1982, 96 Stat. 648, added subchapter C heading and items 6221 to 6232.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 702, 6012, 6211, 6216, 6240, 6512 of this title.

§ 6221. Tax treatment determined at partnership level

Except as otherwise provided in this subchapter, the tax treatment of any partnership item (and the applicability of any penalty, addition to tax, or additional amount which relates to an adjustment to a partnership item) shall be determined at the partnership level.

(Added Pub. L. 97–248, title IV, § 402(a), Sept. 3, 1982, 96 Stat. 648; amended Pub. L. 105–34, title XII, § 1238(a), Aug. 5, 1997, 111 Stat. 1026.)

AMENDMENTS

1997—Pub. L. 105–34 inserted “(and the applicability of any penalty, addition to tax, or additional amount which relates to an adjustment to a partnership item)” after “item”.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1238(c) of Pub. L. 105–34 provided that: “The amendments made by this section [amending this section and sections 6226 and 6230 of this title] shall apply to partnership taxable years ending after the date of the enactment of this Act [Aug. 5, 1997].”

EFFECTIVE DATE

Section 407(a) of Pub. L. 97–248, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: “(1) Except as provided in paragraph (2), the amendments made by sections 402, 403, and 404 [enacting this subchapter and section 1508 of Title 28, Judiciary and Judicial Procedure, amending sections 702, 6031, 6213, 6216, 6422, 6501, 6504, 6511, 6512, 6515, 7422, 7451, 7456, 7459, 7482, and 7485 of this title and section 1346 of Title 28, and enacting provisions set out as a note under section 6031 of this title] shall apply to partnership taxable years beginning after the date of the enactment of this Act [Sept. 3, 1982].

“(2) Section 6232 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall apply to periods after December 31, 1982.

“(3) The amendments made by sections 402, 403, and 404 shall apply to any partnership taxable year (or in the case of section 6232 of such Code, to any period) ending after the date of the enactment of this Act [Sept. 3, 1982] if the partnership, each partner, and each indirect partner requests such application and the Secretary of the Treasury or his delegate consents to such application.”

SHORT TITLE

For short title of title IV of Pub. L. 97-248 as the "Tax Treatment of Partnership Items Act of 1982", see Short Title of 1982 Amendments note set out under section 1 of this title.

§ 6222. Partner's return must be consistent with partnership return or Secretary notified of inconsistency**(a) In general**

A partner shall, on the partner's return, treat a partnership item in a manner which is consistent with the treatment of such partnership item on the partnership return.

(b) Notification of inconsistent treatment**(1) In general**

In the case of any partnership item, if— (A)(i) the partnership has filed a return but the partner's treatment on his return is (or may be) inconsistent with the treatment of the item on the partnership return, or (ii) the partnership has not filed a return, and (B) the partner files with the Secretary a statement identifying the inconsistency, subsection (a) shall not apply to such item.

(2) Partner receiving incorrect information

A partner shall be treated as having complied with subparagraph (B) of paragraph (1) with respect to a partnership item if the partner—

(A) demonstrates to the satisfaction of the Secretary that the treatment of the partnership item on the partner's return is consistent with the treatment of the item on the schedule furnished to the partner by the partnership, and

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

(c) Effect of failure to notify

In any case—

(1) described in paragraph (1)(A)(i) of subsection (b), and

(2) in which the partner does not comply with paragraph (1)(B) of subsection (b), section 6225 shall not apply to any part of a deficiency attributable to any computational adjustment required to make the treatment of the items by such partner consistent with the treatment of the items on the partnership return.

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

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

(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.)

AMENDMENTS

1989—Subsec. (d). Pub. L. 101–239 substituted “part II of subchapter A of chapter 68” for “section 6653(a)”.

1986—Subsec. (d). Pub. L. 99–514 struck out “intentional or negligent” after “case of a partner’s”.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 applicable to returns the due date for which (determined without regard to extensions) is after Dec. 31, 1989, see section 7721(d) of Pub. L. 101–239, set out as a note under section 461 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to returns the due date for which (determined without regard to extensions) is after Dec. 31, 1986, see section 1503(e) of Pub. L. 99–514, set out as a note under section 6653 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6229, 6231 of this title.

§ 6223. Notice to partners of proceedings

(a) Secretary must give partners notice of beginning and completion of administrative proceedings

The Secretary shall mail to each partner whose name and address is furnished to the Secretary notice of—

(1) the beginning of an administrative proceeding at the partnership level with respect to a partnership item, and

(2) the final partnership administrative adjustment resulting from any such proceeding.

A partner shall not be entitled to any notice under this subsection unless the Secretary has received (at least 30 days before it is mailed to the tax matters partner) sufficient information to enable the Secretary to determine that such partner is entitled to such notice and to provide such notice to such partner.

(b) Special rules for partnership with more than 100 partners

(1) Partner with less than 1 percent interest

Except as provided in paragraph (2), subsection (a) shall not apply to a partner if—

(A) the partnership has more than 100 partners, and

(B) the partner has a less than 1 percent interest in the profits of the partnership.

(2) Secretary must give notice to notice group

If a group of partners in the aggregate having a 5 percent or more interest in the profits of a partnership so request and designate one of their members to receive the notice, the member so designated shall be treated as a partner to whom subsection (a) applies.

(c) Information base for Secretary's notices, etc.

For purposes of this subchapter—

(1) Information on partnership return

Except as provided in paragraphs (2) and (3), the Secretary shall use the names, addresses, and profits interests shown on the partnership return.

(2) Use of additional information

The Secretary shall use additional information furnished to him by the tax matters partner or any other person in accordance with regulations prescribed by the Secretary.

(3) Special rule with respect to indirect partners

If any information furnished to the Secretary under paragraph (1) or (2)—

(A) shows that a person has a profits interest in the partnership by reason of ownership of an interest through 1 or more pass-thru partners, and

(B) contains the name, address, and profits interest of such person, then the Secretary shall use the name, address, and profits interest of such person with respect to such partnership interest (in lieu of the names, addresses, and profits interests of the pass-thru partners).

(d) Period for mailing notice

(1) Notice of beginning of proceedings

The Secretary shall mail the notice specified in paragraph (1) of subsection (a) to each partner entitled

to such notice not later than the 120th day before the day on which the notice specified in paragraph (2) of subsection (a) is mailed to the tax matters partner.

(2) Notice of final partnership administrative adjustment

The Secretary shall mail the notice specified in paragraph (2) of subsection (a) to each partner entitled to such notice not later than the 60th day after the day on which the notice specified in such paragraph (2) was mailed to the tax matters partner.

(e) Effect of Secretary's failure to provide notice

(1) Application of subsection

(A) In general

This subsection applies where the Secretary has failed to mail any notice specified in subsection (a) to a partner entitled to such notice within the period specified in subsection (d).

(B) Special rules for partnerships with more than 100 partners

For purposes of subparagraph (A), any partner described in paragraph (1) of subsection (b) shall be treated as entitled to notice specified in subsection (a). The Secretary may provide such notice—

(i) except as provided in clause (ii), by mailing notice to the tax matters partner, or

(ii) in the case of a member of a notice group which qualified under paragraph (2) of subsection (b), by

mailing notice to the partner designated for such purpose by the group.

(2) Proceedings finished

In any case to which this subsection applies, if at the time the Secretary mails the partner notice of the proceeding—

(A) the period within which a petition for review of a final partnership administrative adjustment under section 6226 may be filed has expired and no such petition has been filed, or

(B) the decision of a court in an action begun by such a petition has become final, the partner may elect to have such adjustment, such decision, or a settlement agreement described in paragraph (2) of section 6224(c) with respect to the partnership taxable year to which the adjustment relates apply to such partner. If the partner does not make an election under the preceding sentence, the partnership items of the partner for the partnership taxable year to which the proceeding relates shall be treated as nonpartnership items.

(3) Proceedings still going on

In any case to which this subsection applies, if paragraph (2) does not apply, the partner shall be a party to the proceeding unless such partner elects—

(A) to have a settlement agreement described in paragraph (2) of section 6224(c) with respect to the partnership taxable year to which the proceeding relates apply to the partner, or

(B) to have the partnership items of the partner for the partnership taxable year to which the proceeding relates treated as nonpartnership items.

(f) Only one notice of final partnership administrative adjustment

If the Secretary mails a notice of final partnership administrative adjustment for a partnership taxable year with respect to a partner, the Secretary may not mail another such notice to such partner with respect to the same taxable year of the same partnership in the absence of a showing of fraud, malfeasance, or misrepresentation of a material fact.

(g) Tax matters partner must keep partners informed of proceedings

To the extent and in the manner provided by regulations, the tax matters partner of a partnership shall keep each partner informed of all administrative and judicial proceedings for the adjustment at the partnership level of partnership items.

(h) Pass-thru partner required to forward notice

(1) In general

If a pass-thru partner receives a notice with respect to a partnership proceeding from the Secretary, the tax matters partner, or another pass-thru partner, the pass-thru partner shall, within 30 days of receiving that notice, forward a copy of that notice to the person or persons holding an interest (through the pass-thru partner) in the profits or losses of the partnership for the partnership taxable year to which the notice relates.

(2) Partnership as pass-thru partner

In the case of a pass-thru partner which is a partnership, the tax matters partner of such partnership shall be responsible for forwarding copies of the notice to the partners of such partnership.

(Added Pub. L. 97-248, title IV, § 402(a), Sept. 3, 1982, 96 Stat. 649.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6224, 6229, 6230, 6231 of this title.

§ 6224. Participation in administrative proceedings; waivers; agreements

(a) Participation in administrative proceedings

Any partner has the right to participate in any administrative proceeding relating to the determination of partnership items at the partnership level.

(b) Partner may waive rights

(1) In general

A partner may at any time waive—

(A) any right such partner has under this subchapter, and

(B) any restriction under this subchapter on action by the Secretary.

(2) Form

Any waiver under paragraph (1) shall be made by a signed notice in writing filed with the Secretary.

(c) Settlement agreement

In the absence of a showing of fraud, malfeasance, or misrepresentation of fact—

(1) Binds all parties

A settlement agreement between the Secretary and 1 or more partners in a partnership with respect to the determination of partnership items for any partnership taxable year shall (except as otherwise provided in such agreement) be binding on all parties to such agreement with respect to the determination of partnership items for such partnership taxable year. An indirect partner is bound by any such agreement entered into by the pass-thru partner unless the indirect partner has been identified as provided in section 6223(c)(3).

(2) Other partners have right to enter into consistent agreements

If the Secretary enters into a settlement agreement with any partner with respect to partnership items for any partnership taxable year, the Secretary shall offer to any other partner who so requests settlement terms for the partnership taxable year which are consistent with those contained in such settlement agreement. Except in the case of an election under paragraph (2) or (3) of section 6223(e) to have a settlement agreement described in this paragraph apply, this paragraph shall apply with respect to a settlement agreement entered into with a partner before notice of a final partnership administrative adjustment is

mailed to the tax matters partner only if such other partner makes the request before the expiration of 150 days after the day on which such notice is mailed to the tax matters partner.

(3) Tax matters partner may bind certain other partners

(A) In general

A partner who is not a notice partner (and not a member of a notice group described in subsection (b)(2) of section 6223) shall be bound by any settlement agreement—

- (i) which is entered into by the tax matters partner, and
- (ii) in which the tax matters partner expressly states that such agreement shall bind the other partners.

(B) Exception

Subparagraph (A) shall not apply to any partner who (within the time prescribed by the Secretary) files a statement with the Secretary providing that the tax matters partner shall not have the authority to enter into a settlement agreement on behalf of such partner.

(Added Pub. L. 97-248, title IV, § 402(a), Sept. 3, 1982, 96 Stat. 651.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6223, 6234, 6601 of this title.

§ 6225. Assessments made only after partnership level proceedings are completed

(a) Restriction on assessment and collection

Except as otherwise provided in this subchapter, no assessment of a deficiency attributable to any partnership item may be made (and no levy or proceeding in any court for the collection of any such deficiency may be made, begun, or prosecuted) before—

- (1) the close of the 150th day after the day on which a notice of a final partnership administrative adjustment was mailed to the tax matters partner, and
- (2) if a proceeding is begun in the Tax Court under section 6226 during such 150-day period, the decision of the court in such proceeding 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 or proceeding under this subsection unless a timely petition for a readjustment of the partnership items for the taxable year has been filed and then only in respect of the adjustments that are the subject of such petition.

(c) Limit where no proceeding begun

If no proceeding under section 6226 is begun with respect to any final partnership administrative

adjustment during the 150-day period described in subsection (a), the deficiency assessed against any partner with respect to the partnership items to which such adjustment relates shall not exceed the amount determined in accordance with such adjustment.

(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.)

AMENDMENTS

1997—Pub. L. 105-34 substituted “the proper court, including the Tax Court. The Tax Court shall have no jurisdiction to enjoin any action or proceeding under this subsection unless a timely petition for a readjustment of the partnership items for the taxable year has been filed and then only in respect of the adjustments that are the subject of such petition.” for “the proper court.”

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1239(f) of Pub. L. 105-34 provided that: “The amendments made by this section [amending this section and sections 6226, 6230, 6501, 6512, 7421, 7459, and 7482 of this title] shall apply to partnership taxable years ending after the date of the enactment of this Act [Aug. 5, 1997].”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6222, 6230, 7421 of this title.

§ 6226. Judicial review of final partnership administrative adjustments**(a) Petition by tax matters partner**

Within 90 days after the day on which a notice of a final partnership administrative adjustment is mailed to the tax matters partner, the tax matters partner may file a petition for a readjustment of the partnership items for such taxable year with—

- (1) the Tax Court,
- (2) the district court of the United States for the district in which the partnership's principal place of business is located, or
- (3) the Court of Federal Claims.

(b) Petition by partner other than tax matters partner**(1) In general**

If the tax matters partner does not file a readjustment petition under subsection (a) with respect to any final partnership administrative adjustment, any notice partner (and any 5-percent group) may, within 60 days after the close of the 90-day period set forth in subsection (a), file a petition for a readjustment of the partnership items for the taxable year involved with any of the courts described in subsection (a).

(2) Priority of the Tax Court action

If more than 1 action is brought under paragraph (1) with respect to any partnership for any partnership

taxable year, the first such action brought in the Tax Court shall go forward.

(3) Priority outside the Tax Court

If more than 1 action is brought under paragraph (1) with respect to any partnership for any taxable year but no such action is brought in the Tax Court, the first such action brought shall go forward.

(4) Dismissal of other actions

If an action is brought under paragraph (1) in addition to the action which goes forward under paragraph (2) or (3), such action shall be dismissed.

(5) Treatment of premature petitions

If—

(A) a petition for a readjustment of partnership items for the taxable year involved is filed by a notice partner (or a 5-percent group) during the 90-day period described in subsection (a), and

(B) no action is brought under paragraph

(1) during the 60-day period described therein with respect to such taxable year which is not dismissed, such petition shall be treated for purposes of paragraph (1) as filed on the last day of such 60-day period.

(6) Tax matters partner may intervene

The tax matters partner may intervene in any action brought under this subsection.

(c) Partners treated as parties

If an action is brought under subsection (a) or

(b) with respect to a partnership for any partnership taxable year—

(1) each person who was a partner in such partnership at any time during such year shall be treated as a party to such action, and

(2) the court having jurisdiction of such action shall allow each such person to participate in the action.

(d) Partner must have interest in outcome

(1) In order to be party to action

Subsection (c) shall not apply to a partner after the day on which—

(A) the partnership items of such partner for the partnership taxable year became nonpartnership items by reason of 1 or more of the events described in subsection (b) of section 6231, or

(B) the period within which any tax attributable to such partnership items may be assessed against that partner expired.

Notwithstanding subparagraph (B), any person treated under subsection (c) as a party to an action shall be permitted to participate in such action (or file a readjustment petition under subsection (b) or paragraph (2) of this subsection) solely for the purpose of asserting that the period of limitations for assessing any tax attributable to partnership items has expired with respect to such person, and the court having

jurisdiction of such action shall have jurisdiction to consider such assertion.

(2) To file petition

No partner may file a readjustment petition under subsection (b) unless such partner would (after the application of paragraph (1) of this subsection) be treated as a party to the proceeding.

(e) Jurisdictional requirement for bringing action in district court or Court of Federal Claims

(1) In general

A readjustment petition under this section may be filed in a district court of the United States or the Court of Federal Claims only if the partner filing the petition deposits with the Secretary, on or before the day the petition is filed, the amount by which the tax liability of the partner would be increased if the treatment of partnership items on the partner's return were made consistent with the treatment of partnership items on the partnership return, as adjusted by the final partnership administrative adjustment. In the case of a petition filed by a 5-percent group, the requirement of the preceding sentence shall apply to each member of the group. The court may by order provide that the jurisdictional requirements of this paragraph are satisfied where there has been a good faith attempt to satisfy such requirements and any shortfall in the amount required to be deposited is timely corrected.

(2) Refund on request

If an action brought in a district court of the United States or in the Court of Federal Claims is dismissed by reason of the priority of a Tax Court action under paragraph (2) of subsection (b), the Secretary shall, at the request of the partner who made the deposit, refund the amount deposited under paragraph (1).

(3) Interest payable

Any amount deposited under paragraph (1), while deposited, shall not be treated as a payment of tax for purposes of this title (other than chapter 67).

(f) Scope of judicial review

A court with which a petition is filed in accordance with this section shall have jurisdiction to determine all partnership items of the partnership for the partnership taxable year to which the notice of final partnership administrative adjustment relates, the proper allocation of such items among the partners, and the applicability of any penalty, addition to tax, or additional amount which relates to an adjustment to a partnership item.

(g) Determination of court reviewable

Any determination by a court under this section shall have the force and effect of a decision of the Tax Court or a final judgment or decree of the district court or the Court of Federal Claims, as the case may be, and shall be reviewable as such. With respect to the partnership, only the tax matters partner, a notice partner, or a 5-percent group may seek review of a determination by a court under this section.

(h) Effect of decision dismissing action

If an action brought under this section is dismissed (other than under paragraph (4) of subsection (b)), the decision of the court dismissing the action shall be considered as its decision that the notice of final partnership administrative adjustment is correct, and an appropriate order shall be entered in the records of the court.

(Added Pub. L. 97-248, title IV, § 402(a), Sept. 3, 1982, 96 Stat. 653; amended Pub. L. 97-448, title III, § 306(c)(1)(A), Jan. 12, 1983, 96 Stat. 2406; Pub. L. 102-572, title IX, § 902(b)(2), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 105-34, title XII, §§ 1238(b)(1), 1239(b), 1240(a), Aug. 5, 1997, 111 Stat. 1026-1028.)

AMENDMENTS

1997—Subsec. (b)(5), (6). Pub. L. 105-34, § 1240(a), added par. (5) and redesignated former par. (5) as (6).

Subsec. (d)(1). Pub. L. 105-34, § 1239(b), inserted concluding provisions.

Subsec. (f). Pub. L. 105-34, § 1238(b)(1), substituted “relates,” for “relates and” and inserted “, and the applicability of any penalty, addition to tax, or additional amount which relates to an adjustment to a partnership item” before period at end.

1992—Subsecs. (a)(3), (e), (g). Pub. L. 102-572 substituted “Court of Federal Claims” for “Claims Court” wherever appearing.

1983—Subsec. (g). Pub. L. 97-448 substituted “With respect to the partnership, only the tax matters partner” for “Only the tax matters partner”.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 1238(b)(1) 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(b) 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.

Section 1240(b) of Pub. L. 105–34 provided that: “The amendment made by this section [amending this section] shall apply to petitions filed after the date of the enactment of this Act [Aug. 5, 1997].”

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 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective as if included in the provisions of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 311(d) of Pub. L. 97–448, set out as a note under section 31 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6223, 6225, 6228, 6229, 6230, 6234, 7451, 7459, 7482, 7485 of this title; title 28 sections 1346, 1508.

§ 6227. Administrative adjustment requests**(a) General rule**

A partner may file a request for an administrative adjustment of partnership items for any partnership taxable year at any time which is—

- (1) within 3 years after the later of—
 - (A) the date on which the partnership return for such year is filed, or
 - (B) the last day for filing the partnership return for such year (determined without regard to extensions), and
- (2) before the mailing to the tax matters partner of a notice of final partnership administrative adjustment with respect to such taxable year.

(b) Special rule in case of extension of period of limitations under section 6229

The period prescribed by subsection (a)(1) for filing of a request for an administrative adjustment shall be extended—

- (1) for the period within which an assessment may be made pursuant to an agreement (or any extension thereof) under section 6229(b), and
- (2) for 6 months thereafter.

(c) Requests by tax matters partner on behalf of partnership**(1) Substituted return**

If the tax matters partner—

(A) files a request for an administrative adjustment, and

(B) asks that the treatment shown on the request be substituted for the treatment of partnership items on the partnership return to which the request relates,

the Secretary may treat the changes shown on such request as corrections of mathematical or clerical errors appearing on the partnership return.

(2) Requests not treated as substituted returns

(A) In general

If the tax matters partner files an administrative adjustment request on behalf of the partnership which is not treated as a substituted return under paragraph (1), the Secretary may, with respect to all or any part of the requested adjustments—

(i) without conducting any proceeding, allow or make to all partners the credits or refunds arising from the requested adjustments,

(ii) conduct a partnership proceeding under this subchapter, or

(iii) take no action on the request.

(B) Exceptions

Clause (i) of subparagraph (A) shall not apply with respect to a partner after the day on which the partnership items become nonpartnership items by

reason of 1 or more of the events described in subsection (b) of section 6231.

(3) Request must show effect on distributive shares

The tax matters partner shall furnish with any administrative adjustment request on behalf of the partnership revised schedules showing the effect of such request on the distributive shares of the partners and such other information as may be required under regulations.

(d) Other requests

If any partner files a request for an administrative adjustment (other than a request described in subsection (b)), the Secretary may—

(1) process the request in the same manner as a claim for credit or refund with respect to items which are not partnership items,

(2) assess any additional tax that would result from the requested adjustments,

(3) mail to the partner, under subparagraph

(A) of section 6231(b)(1) (relating to items becoming nonpartnership items), a notice that all partnership items of the partner for the partnership taxable year to which such request relates shall be treated as nonpartnership items, or

(4) conduct a partnership proceeding.

(e) Requests with respect to bad debts or worthless securities

In the case of that portion of any request for an administrative adjustment which relates to the deductibility by the partnership under section 166 of a debt as a debt which became worthless, or under section 165(g) of a loss from worthlessness of a security, the period prescribed in subsection (a)(1) shall be 7 years from the last day for filing the partnership return for the year with respect to which such request is made (determined without regard to extensions).

(Added Pub. L. 97-248, title IV, § 402(a), Sept. 3, 1982, 96 Stat. 655; amended Pub. L. 105-34, title XII, §§ 1236(a), 1243(a), Aug. 5, 1997, 111 Stat. 1025, 1029.)

AMENDMENTS

1997—Subsecs. (b) to (d). Pub. L. 105-34, § 1236(a), added subsec. (b) and redesignated former subsecs. (b) and (c) as (c) and (d), respectively.

Subsec. (e). Pub. L. 105-34, § 1243(a), added subsec. (e).

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1236(b) of Pub. L. 105-34 provided that: “The amendment made by this section [amending this section] 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].”

Section 1243(b) of Pub. L. 105-34 provided that:

“(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] 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].

“(2) TREATMENT OF REQUESTS FILED BEFORE DATE OF

ENACTMENT.—In the case of that portion of any request (filed before the date of the enactment of this Act [Aug. 5, 1997]) for an administrative adjustment which relates to the deductibility of a debt as a debt which became worthless or the deductibility of a loss from the worthlessness of a security—

“(A) paragraph (2) of section 6227(a) of the Internal Revenue Code of 1986 shall not apply,

“(B) the period for filing a petition under section 6228 of the Internal Revenue Code of 1986 with respect to such request shall not expire before the date 6 months after the date of the enactment of this Act, and

“(C) such a petition may be filed without regard to whether there was a notice of the beginning of an administrative proceeding or a final partnership administrative adjustment.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6228, 6230, 6231, 6422, 6515 of this title.

§ 6228. Judicial review where administrative adjustment request is not allowed in full

(a) Request on behalf of partnership

(1) In general

If any part of an administrative adjustment request filed by the tax matters partner under subsection (b) 1 of section 6227 is not allowed by the Secretary, the tax matters partner may file a petition for an adjustment with respect to the partnership items to which such part of the request relates with—

(A) the Tax Court,

(B) the district court of the United States for the district in which the principal place of business of the partnership is located, or

(C) the Court of Federal Claims.

(2) Period for filing petition

(A) In general

A petition may be filed under paragraph

(1) with respect to partnership items for a partnership taxable year only—

(i) after the expiration of 6 months from the date of filing of the request under section 6227, and

(ii) before the date which is 2 years after the date of such request.

(B) No petition after notice of beginning of administrative proceeding

No petition may be filed under paragraph

(1) after the day the Secretary mails to the partnership a notice of the beginning of an administrative proceeding with respect to the

partnership taxable year to which such request relates.

(C) Failure by Secretary to issue timely notice of adjustment

If the Secretary—

(i) mails the notice referred to in subparagraph (B) before the expiration of the 2-year period referred to in clause (ii) of subparagraph (A), and

(ii) fails to mail a notice of final partnership administrative adjustment with respect to the partnership taxable year to which the request relates before the expiration of the period described in section 6229(a) (including any extension by agreement), subparagraph (B) shall cease to apply with respect to such request, and the 2-year period referred to in clause (ii) of subparagraph

(A) shall not expire before the date 6 months after the expiration of the period described in section 6229(a) (including any extension by agreement).

(D) Extension of time

The 2-year period described in subparagraph (A)(ii) shall be extended for such period as may be agreed upon in writing between the tax matters partner and the Secretary.

(3) Coordination with administrative adjustment

(A) Administrative adjustment before filing of petition

No petition may be filed under this subsection after the Secretary mails to the tax matters partner a notice of final partnership administrative adjustment for the partnership taxable year to which the request under subsection (b) 1 of section 6227 relates.

(B) Administrative adjustment after filing but before hearing of petition

If the Secretary mails to the tax matters partner a notice of final partnership administrative adjustment for the partnership taxable year to which the request under section 6227 relates after the filing of a petition under this subsection but before the hearing of such petition, such petition shall be treated as an action brought under section 6226 with respect to that administrative adjustment, except that subsection (e) of section 6226 shall not apply.

(C) Notice must be before expiration of statute of limitations

A notice of final partnership administrative adjustment for the partnership taxable year shall be taken into account under subparagraphs (A) and (B) only if such notice is mailed before the expiration of the period prescribed by section 6229 for making assessments of tax attributable to partnership items for such taxable year.

(4) Partners treated as party to action

(A) In general

If an action is brought by the tax matters partner under paragraph (1) with respect to any request for an

adjustment of a partnership item for any taxable year—

- (i) each person who was a partner in such partnership at any time during the partnership taxable year involved shall be treated as a party to such action, and
- (ii) the court having jurisdiction of such action shall allow each such person to participate in the action.

(B) Partners must have interest in outcome

For purposes of subparagraph (A), rules similar to the rules of paragraph (1) of section 6226(d) shall apply.

(5) Scope of judicial review

Except in the case described in subparagraph

(B) of paragraph (3), a court with which a petition is filed in accordance with this subsection shall have jurisdiction to determine only those partnership items to which the part of the request under section 6227 not allowed by the Secretary relates and those items with respect to which the Secretary asserts adjustments as offsets to the adjustments requested by the tax matters partner.

(6) Determination of court reviewable

Any determination by a court under this subsection shall have the force and effect of a decision of the Tax Court or a final judgment or decree of the district court or the Court of Federal Claims, as the case may be, and shall be reviewable as such. With respect to the

partnership, only the tax matters partner, a notice partner, or a 5-percent group may seek review of a determination by a court under this subsection.

(b) Other requests

(1) Notice providing that items become nonpartnership items

If the Secretary mails to a partner, under subparagraph (A) of section 6231(b)(1) (relating to items ceasing to be partnership items), a notice that all partnership items of the partner for the partnership taxable year to which a timely request for administrative adjustment under subsection (c) 1 of section 6227 relates shall be treated as nonpartnership items—

(A) such request shall be treated as a claim for credit or refund of an overpayment attributable to nonpartnership items, and

(B) the partner may bring an action under section 7422 with respect to such claim at any time within 2 years of the mailing of such notice.

(2) Other cases

(A) In general

If the Secretary fails to allow any part of an administrative adjustment request filed under subsection (c) 1 of section 6227 by a partner and paragraph (1) does not apply—

(i) such partner may, pursuant to section 7422, begin a civil action for refund of any amount due by

reason of the adjustments described in such part of the request, and

(ii) on the beginning of such civil action, the partnership items of such partner for the partnership taxable year to which such part of such request relates shall be treated as nonpartnership items for purposes of this subchapter.

(B) Period for filing petition

(i) In general

An action may be begun under subparagraph (A) with respect to an administrative adjustment request for a partnership taxable year only—

- (I) after the expiration of 6 months from the date of filing of the request under section 6227, and
- (II) before the date which is 2 years after the date of filing of such request.

(ii) Extension of time

The 2-year period described in subclause

(II) of clause (i) shall be extended for such period as may be agreed upon in writing between the partner and the Secretary.

(C) Action barred after partnership proceeding has begun

No petition may be filed under subparagraph (A) with respect to an administrative adjustment request for a partnership taxable year after the Secretary

mails to the partnership a notice of the beginning of a partnership proceeding with respect to such year.

(D) Failure by Secretary to issue timely notice of adjustment

If the Secretary—

(i) mails the notice referred to in subparagraph (C) before the expiration of the 2-year period referred to in clause (i)(II) of subparagraph (B), and

(ii) fails to mail a notice of final partnership administrative adjustment with respect to the partnership taxable year to which the request relates before the expiration of the period described in section 6229(a) (including any extension by agreement), subparagraph (C) shall cease to apply with respect to such request, and the 2-year period referred to in clause (i)(II) of subparagraph (B) shall not expire before the date 6 months after the expiration of the period described in section 6229(a) (including any extension by agreement).

(Added Pub. L. 97-248, title IV, § 402(a), Sept. 3, 1982, 96 Stat. 656; amended Pub. L. 97-448, title III, § 306(c)(1)(B), Jan. 12, 1983, 96 Stat. 2406; Pub. L. 102-572, title IX, § 902(b)(2), Oct. 29, 1992, 106 Stat. 4516.)

REFERENCES IN TEXT

Subsections (b) and (c) of section 6227 of this title, referred to in subsecs. (a)(1), (3)(A) and (b)(1), (2)(A), were redesignated subsecs. (c) and (d), respectively, of section 6227 of this title and a new subsec. (b) was added by Pub. L. 105-34, title XII, § 1236(a), Aug. 5, 1997, 111 Stat. 1025.

AMENDMENTS

1992—Subsec. (a)(1)(C), (6). Pub. L. 102–572 substituted “Court of Federal Claims” for “Claims Court”.

1983—Subsec. (a)(6). Pub. L. 97–448 substituted “With respect to the partnership, only the tax matters partner” for “Only the tax matters partner”.

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 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective as if included in the provisions of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 311(d) of Pub. L. 97–448, set out as a note under section 31 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6230, 6231, 7422, 7451, 7459, 7482, 7485 of this title; title 28 sections 1346, 1508.

§ 6229. Period of limitations for making assessments

(a) General rule

Except as otherwise provided in this section, the period for assessing any tax imposed by subtitle A with respect to any person which is attributable to any partnership item (or affected item) for a partnership taxable year shall not expire before the date which is 3 years after the later of—

- (1) the date on which the partnership return for such taxable year was filed, or
- (2) the last day for filing such return for such year (determined without regard to extensions).

(b) Extension by agreement

(1) In general

The period described in subsection (a) (including an extension period under this subsection) may be extended—

- (A) with respect to any partner, by an agreement entered into by the Secretary and such partner, and
- (B) with respect to all partners, by an agreement entered into by the Secretary and the tax matters partner (or any other person authorized by the partnership in writing to enter into such an agreement), before the expiration of such period.

(2) Special rule with respect to debtors in title 11 cases

Notwithstanding any other law or rule of law, if an agreement is entered into under paragraph (1)(B) and the agreement is signed by a person who would be the tax matters partner but for the fact that, at the time

that the agreement is executed, the person is a debtor in a bankruptcy proceeding under title 11 of the United States Code, such agreement shall be binding on all partners in the partnership unless the Secretary has been notified of the bankruptcy proceeding in accordance with regulations prescribed by the Secretary.

(3) Coordination with section 6501(c)(4)

Any agreement under section 6501(c)(4) shall apply with respect to the period described in subsection (a) only if the agreement expressly provides that such agreement applies to tax attributable to partnership items.

(c) Special rule in case of fraud, etc.

(1) False return

If any partner has, with the intent to evade tax, signed or participated directly or indirectly in the preparation of a partnership return which includes a false or fraudulent item—

(A) in the case of partners so signing or participating in the preparation of the return, any tax imposed by subtitle A which is attributable to any partnership item (or affected item) for the partnership taxable year to which the return relates may be assessed at any time, and

(B) in the case of all other partners, subsection (a) shall be applied with respect to such return by substituting “6 years” for “3 years”.

(2) Substantial omission of income

If any partnership omits from gross income an amount properly includible therein which is in excess of 25 percent of the amount of gross income stated in its return, subsection

(a) shall be applied by substituting "6 years" for "3 years".

(3) No return

In the case of a failure by a partnership to file a return for any taxable year, any tax attributable to a partnership item (or affected item) arising in such year may be assessed at any time.

(4) Return filed by Secretary

For purposes of this section, a return executed by the Secretary under subsection (b) of section 6020 on behalf of the partnership shall not be treated as a return of the partnership.

(d) Suspension when Secretary makes administrative adjustment

If notice of a final partnership administrative adjustment with respect to any taxable year is mailed to the tax matters partner, the running of the period specified in subsection (a) (as modified by other provisions of this section) shall be suspended—

(1) for the period during which an action may be brought under section 6226 (and, if a petition is filed under section 6226 with respect to such administrative adjustment, until the decision of the court becomes final), and

(2) for 1 year thereafter.

(e) Unidentified partner

If—

(1) the name, address, and taxpayer identification number of a partner are not furnished on the partnership return for a partnership taxable year, and

(2)(A) the Secretary, before the expiration of the period otherwise provided under this section with respect to such partner, mails to the tax matters partner the notice specified in paragraph (2) of section 6223(a) with respect to such taxable year, or

(B) the partner has failed to comply with subsection (b) of section 6222 (relating to notification of inconsistent treatment) with respect to any partnership item for such taxable year, the period for assessing any tax imposed by subtitle A which is attributable to any partnership item (or affected item) for such taxable year shall not expire with respect to such partner before the date which is 1 year after the date on which the name, address, and taxpayer identification number of such partner are furnished to the Secretary.

(f) Special rules

(1) Items becoming nonpartnership items

If before the expiration of the period otherwise provided in this section for assessing any tax imposed by subtitle A with respect to the partnership items of a partner for the partnership taxable year, such items become nonpartnership items by reason of 1 or more of

the events described in subsection (b) of section 6231, the period for assessing any tax imposed by subtitle A which is attributable to such items (or any item affected by such items) shall not expire before the date which is 1 year after the date on which the items become nonpartnership items. The period described in the preceding sentence (including any extension period under this sentence) may be extended with respect to any partner by agreement entered into by the Secretary and such partner.

(2) Special rule for partial settlement agreements

If a partner enters into a settlement agreement with the Secretary with respect to the treatment of some of the partnership items in dispute for a partnership taxable year but other partnership items for such year remain in dispute, the period of limitations for assessing any tax attributable to the settled items shall be determined as if such agreement had not been entered into.

(g) Period of limitations for penalties

The provisions of this section shall apply also in the case of any addition to tax or an additional amount imposed under subchapter A of chapter 68 which arises with respect to any tax imposed under subtitle A in the same manner as if such addition or additional amount were a tax imposed by subtitle A.

(h) Suspension during pendency of bankruptcy proceeding

If a petition is filed naming a partner as a debtor in a bankruptcy proceeding under title 11 of the United

States Code, the running of the period of limitations provided in this section with respect to such partner shall be suspended—

- (1) for the period during which the Secretary is prohibited by reason of such bankruptcy proceeding from making an assessment, and
- (2) for 60 days thereafter.

(Added Pub. L. 97-248, title IV, § 402(a), Sept. 3, 1982, 96 Stat. 659; amended Pub. L. 99-514, title XVIII, § 1875(d)(1), Oct. 22, 1986, 100 Stat. 2896; Pub. L. 100-647, title I, § 1018(o)(3), Nov. 10, 1988, 102 Stat. 3585; Pub. L. 105-34, title XII, §§ 1233(a)-(c), 1235(a), Aug. 5, 1997, 111 Stat. 1023, 1024.)

AMENDMENTS

1997—Subsec. (b)(2), (3). Pub. L. 105-34, § 1233(c), added par. (2) and redesignated former par. (2) as (3).

Subsec. (d)(1). Pub. L. 105-34, § 1233(a), substituted “(and, if a petition is filed under section 6226 with respect to such administrative adjustment, until the decision of the court becomes final), and” for “(and, if an action with respect to such administrative adjustment is brought during such period, until the decision of the court in such action becomes final), and”.

Subsec. (f). Pub. L. 105-34, § 1235(a), substituted “Special rules” for “Items becoming nonpartnership items” in heading, designated existing provisions as par. (1), added heading, and realigned margins, and added par. (2).

Subsec. (h). Pub. L. 105–34, § 1233(b), added subsec. (h). 1988—Subsec. (f). Pub. L. 100–647 inserted sentence at end relating to extension of period with respect to any partner by agreement entered into by Secretary and such partner.

1986—Subsec. (g). Pub. L. 99–514 added subsec. (g).

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1233(d) of Pub. L. 105–34 provided that:

“(1) SUBSECTIONS (a) AND (b).—The amendments made by subsections (a) and (b) [amending this section] shall apply to partnership taxable years with respect to which the period under section 6229 of the Internal Revenue Code of 1986 [26 U.S.C. 6229] for assessing tax has not expired on or before the date of the enactment of this Act [Aug. 5, 1997].

“(2) SUBSECTION (c).—The amendment made by subsection (c) [amending this section] shall apply to agreements entered into after the date of the enactment of this Act.”

Section 1235(b) of Pub. L. 105–34 provided that: “The amendment made by this section [amending this section] shall apply to settlements entered into after the date of the enactment of this Act [Aug. 5, 1997].”

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

Amendment by Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6227, 6228, 6230, 6234, 6255, 6501, 6503, 6504, 6512 of this title.

§ 6230. Additional administrative provisions**(a) Coordination with deficiency proceedings****(1) In general**

Except as provided in paragraph (2) or (3), subchapter B of this chapter shall not apply to the assessment or collection of any computational adjustment.

(2) Deficiency proceedings to apply in certain cases

(A) Subchapter B shall apply to any deficiency attributable to—

(i) affected items which require partner level determinations (other than penalties, additions to tax, and additional amounts that relate to adjustments to partnership items), or

(ii) items which have become nonpartnership items (other than by reason of section 6231(b)(1)(C)) and are described in section 6231(e)(1)(B).

(B) Subchapter B shall be applied separately with respect to each deficiency described in subparagraph (A) attributable to each partnership.

(C) Notwithstanding any other law or rule of law, any notice or proceeding under subchapter B with respect to a deficiency described in this paragraph shall not preclude or be precluded by any other notice, proceeding, or determination with respect to a partner's tax liability for a taxable year.

(3) Special rule in case of assertion by partner's spouse of innocent spouse relief

(A) Notwithstanding section 6404(b), if the spouse of a partner asserts that section 6013(e) applies with respect to a liability that is attributable to any adjustment to a partnership item (including any liability for any penalties, additions to tax, or additional amounts relating to such adjustment), then such spouse may file with the Secretary within 60 days after the notice of computational adjustment is mailed

to the spouse a request for abatement of the assessment specified in such notice. Upon receipt of such request, the Secretary shall abate the assessment. Any reassessment of the tax with respect to which an abatement is made under this subparagraph shall be subject to the deficiency procedures prescribed by subchapter B. The period for making any such reassessment shall not expire before the expiration of 60 days after the date of such abatement.

(B) If the spouse files a petition with the Tax Court pursuant to section 6213 with respect to the request for abatement described in subparagraph (A), the Tax Court shall only have jurisdiction pursuant to this section to determine whether the requirements of section 6013(e) have been satisfied. For purposes of such determination, the treatment of partnership items (and the applicability of any penalties, additions to tax, or additional amounts) under the settlement, the final partnership administrative adjustment, or the decision of the court (whichever is appropriate) that gave rise to the liability in question shall be conclusive.

(C) Rules similar to the rules contained in subparagraphs (B) and (C) of paragraph (2) shall apply for purposes of this paragraph.

(b) Mathematical and clerical errors appearing on partnership return

(1) In general

Section 6225 shall not apply to any adjustment necessary to correct a mathematical or clerical error

(as defined in section 6213(g)(2)) appearing on the partnership return.

(2) Exception

Paragraph (1) shall not apply to a partner if, within 60 days after the day on which notice of the correction of the error is mailed to the partner, such partner files with the Secretary a request that the correction not be made.

(c) Claims arising out of erroneous computations, etc.

(1) In general

A partner may file a claim for refund on the grounds that—

(A) the Secretary erroneously computed any computational adjustment necessary—

(i) to make the partnership items on the partner's return consistent with the treatment of the partnership items on the partnership return, or

(ii) to apply to the partner a settlement, a final partnership administrative adjustment, or the decision of a court in an action brought under section 6226 or section 6228(a),

(B) the Secretary failed to allow a credit or to make a refund to the partner in the amount of the overpayment attributable to the application to the partner of a settlement, a final partnership administrative adjustment, or the decision of a court

in an action brought under section 6226 or section 6228(a), or

(C) the Secretary erroneously imposed any penalty, addition to tax, or additional amount which relates to an adjustment to a partnership item.

(2) Time for filing claim

(A) Under paragraph (1)(A) or (C)

Any claim under subparagraph (A) or (C) of paragraph (1) shall be filed within 6 months after the day on which the Secretary mails the notice of computational adjustment to the partner.

(B) Under paragraph (1)(B)

Any claim under paragraph (1)(B) shall be filed within 2 years after whichever of the following days is appropriate:

(i) the day on which the settlement is entered into,

(ii) the day on which the period during which an action may be brought under section 6226 with respect to the final partnership administrative adjustment expires, or

(iii) the day on which the decision of the court becomes final.

(3) Suit if claim not allowed

If any portion of a claim under paragraph (1) is not allowed, the partner may bring suit with respect to such portion within the period specified in subsection

(a) of section 6532 (relating to periods of limitations on refund suits).

(4) No review of substantive issues

For purposes of any claim or suit under this subsection, the treatment of partnership items on the partnership return, under the settlement, under the final partnership administrative adjustment, or under the decision of the court (whichever is appropriate) shall be conclusive. In addition, the determination under the final partnership administrative adjustment or under the decision of the court (whichever is appropriate) concerning the applicability of any penalty, addition to tax, or additional amount which relates to an adjustment to a partnership item shall also be conclusive. Notwithstanding the preceding sentence, the partner shall be allowed to assert any partner level defenses that may apply or to challenge the amount of the computational adjustment.

(5) Rules for seeking innocent spouse relief

(A) In general

The spouse of a partner may file a claim for refund on the ground that the Secretary failed to relieve the spouse under section 6015 from a liability that is attributable to an adjustment to a partnership item (including any liability for any penalties, additions to tax, or additional amounts relating to such adjustment).

(B) Time for filing claim

Any claim under subparagraph (A) shall be filed within 6 months after the day on which the Secretary mails to the spouse the notice of computational adjustment referred to in subsection (a)(3)(A).

(C) Suit if claim not allowed

If the claim under subparagraph (B) is not allowed, the spouse may bring suit with respect to the claim within the period specified in paragraph (3).

(D) Prior determinations are binding

For purposes of any claim or suit under this paragraph, the treatment of partnership items (and the applicability of any penalties, additions to tax, or additional amounts) under the settlement, the final partnership administrative adjustment, or the decision of the court (whichever is appropriate) that gave rise to the liability in question shall be conclusive.

(d) Special rules with respect to credits or refunds attributable to partnership items

(1) In general

Except as otherwise provided in this subsection, no credit or refund of an overpayment attributable to a partnership item (or an affected item) for a partnership taxable year shall be allowed or made to any partner after the expiration of the period of limitation prescribed in section 6229 with respect to such partner for assessment of any tax attributable to such item.

(2) Administrative adjustment request

If a request for an administrative adjustment under section 6227 with respect to a partnership item is timely filed, credit or refund of any overpayment attributable to such partnership item (or an affected item) may be allowed or made at any time before the expiration of the period prescribed in section 6228 for bringing suit with respect to such request.

(3) Claim under subsection (c)

If a timely claim is filed under subsection (c) for a credit or refund of an overpayment attributable to a partnership item (or affected item), credit or refund of such overpayment may be allowed or made at any time before the expiration of the period specified in section 6532 (relating to periods of limitations on suits) for bringing suit with respect to such claim.

(4) Timely suit

Paragraph (1) shall not apply to any credit or refund of any overpayment attributable to a partnership item (or an item affected by such partnership item) if a partner brings a timely suit with respect to a timely administrative adjustment request under section 6228 or a timely claim under subsection (c) relating to such overpayment.

(5) Overpayments refunded without requirement that partner file claim

In the case of any overpayment by a partner which is attributable to a partnership item (or an affected item) and which may be refunded under this subchapter, to the extent practicable credit or refund of such overpayment shall be allowed or made without any requirement that the partner file a claim therefor.

(6) Subchapter B of chapter 66 not applicable

Subchapter B of chapter 66 (relating to limitations on credit or refund) shall not apply to any credit or refund of an overpayment attributable to a partnership item.

(e) Tax matters partner required to furnish names of partners to Secretary

If the Secretary mails to any partnership the notice specified in paragraph (1) of section 6223(a) with respect to any partnership taxable year, the tax matters partner shall furnish to the Secretary the name, address, profits interest, and taxpayer identification number of each person who was a partner in such partnership at any time during such taxable year. If the tax matters partner later discovers that the information furnished to the Secretary was incorrect or incomplete, the tax matters partner shall furnish such revised or additional information as may be necessary.

(f) Failure of tax matters partner, etc., to fulfill responsibility does not affect applicability of proceeding

The failure of the tax matters partner, a pass-thru partner, the representative of a notice group, or any other representative of a partner to provide any notice or perform any act required under this subchapter or under regulations prescribed under this subchapter on behalf of such partner does not affect the applicability of any proceeding or adjustment under this subchapter to such partner.

(g) Date decision of court becomes final

For purposes of section 6229(d)(1) and section 6230(c)(2)(B), the principles of section 7481(a) shall be applied in determining the date on which a decision of a district court or the Court of Federal Claims becomes final.

(h) Examination authority not limited

Nothing in this subchapter shall be construed as limiting the authority granted to the Secretary under section 7602.

(i) Time and manner of filing statements, making elections, etc.

Except as otherwise provided in this subchapter, each—

- (1) statement,
- (2) election,
- (3) request, and
- (4) furnishing of information,

shall be filed or made at such time, in such manner, and at such place as may be prescribed in regulations.

(j) Partnerships having principal place of business outside the United States

For purposes of sections 6226 and 6228, a principal place of business located outside the United States shall be treated as located in the District of Columbia.

(k) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subchapter. Any reference in this subchapter to regulations is a reference to regulations prescribed by the Secretary.

(I) Court rules

Any action brought under any provision of this subchapter shall be conducted in accordance with such rules of practice and procedure as may be prescribed by the Court in which the action is brought.

(Added Pub. L. 97-248, title IV, § 402(a), Sept. 3, 1982, 96 Stat. 660; amended Pub. L. 98-369, div. A, title VII, § 714(p)(2)(A), July 18, 1984, 98 Stat. 964; Pub. L. 99-514, title XVIII, § 1875(d)(2)(A), Oct. 22, 1986, 100 Stat. 2896; Pub. L. 100-647, title I, § 1018(o)(1), Nov. 10, 1988, 102 Stat. 3584; Pub. L. 102-572, title IX, § 902(b)(2), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 105-34, title XII, §§ 1237(a)-(c)(1), 1238(b)(2)-(6), 1239(c)(1), Aug. 5, 1997, 111 Stat. 1025-1028; Pub. L. 105-206, title III, § 3201(e)(2), July 22, 1998, 112 Stat. 740.)

AMENDMENTS

1998—Subsec. (c)(5)(A). Pub. L. 105-206 substituted “section 6015” for “section 6013(e)”.

1997—Subsec. (a)(1). Pub. L. 105-34, § 1237(c)(1), substituted “paragraph (2) or (3)” for “paragraph (2)”.

Subsec. (a)(2)(A)(i). Pub. L. 105-34, § 1238(b)(2), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: “affected items which require partner level determinations, or”.

Subsec. (a)(3). Pub. L. 105–34, § 1237(a), added par. (3).

Subsec. (a)(3)(A). Pub. L. 105–34, § 1238(b)(3)(A), inserted “(including any liability for any penalties, additions to tax, or additional amounts relating to such adjustment)” after “partnership item”.

Subsec. (a)(3)(B). Pub. L. 105–34, § 1238(b)(3)(B), inserted “(and the applicability of any penalties, additions to tax, or additional amounts)” after “partnership items”.

Subsec. (c)(1)(C). Pub. L. 105–34, § 1238(b)(4), added subpar. (C).

Subsec. (c)(2)(A). Pub. L. 105–34, § 1238(b)(5), inserted ‘or (C)’ after “(1)(A)” in subpar. heading and substituted “subparagraph (A) or (C) of paragraph (1)” for “paragraph (1)(A)” in text.

Subsec. (c)(4). Pub. L. 105–34, § 1238(b)(6), inserted at end “In addition, the determination under the final partnership administrative adjustment or under the decision of the court (whichever is appropriate) concerning the applicability of any penalty, addition to tax, or additional amount which relates to an adjustment to a partnership item shall also be conclusive. Notwithstanding the preceding sentence, the partner shall be allowed to assert any partner level defenses that may apply or to challenge the amount of the computational adjustment.”

Subsec. (c)(5). Pub. L. 105–34, § 1237(b), added par. (5).

Subsec. (c)(5)(A). Pub. L. 105–34, § 1238(b)(3)(C), inserted before period at end “(including any liability for any penalties, additions to tax, or additional amounts relating to such adjustment)”.

Subsec. (c)(5)(D). Pub. L. 105–34, § 1238(b)(3)(D), inserted “(and the applicability of any penalties, additions to tax, or additional amounts)” after “partnership items”.

Subsec. (d)(6). Pub. L. 105–34, § 1239(c)(1), struck out “(or an affected item)” after “partnership item”. 1992—Subsec. (g). Pub. L. 102–572 substituted “Court of Federal Claims” for “Claims Court”.

1988—Subsec. (a)(2)(A)(ii). Pub. L. 100–647 inserted “(other than by reason of section 6231(b)(1)(C))” after “nonpartnership items”.

1986—Subsec. (a). Pub. L. 99–514 substituted “Coordination with deficiency proceedings” for “Normal deficiency proceedings do not apply to computational adjustments” as subsec. heading, and amended text generally. Prior to amendment text read as follows: “Subchapter B of this chapter shall not apply to the assessment or collection of any computational adjustment.” 1984—Subsec. (c)(1)(B). Pub. L. 98–369 struck out “(or erroneously computed the amount of any such credit or refund)” after “section 6228(a)”.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 applicable to any liability for tax arising after July 22, 1998, and any liability for tax arising on or before such date but remaining 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

Section 1237(d) of Pub. L. 105–34 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

Section 1875(d)(2)(C) of Pub. L. 99-514 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6213, 6234, 6422, 6503, 6512, 6515, 7422 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 corporation, 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 Secretary 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 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(c) 1 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.)

REFERENCES IN TEXT

Section 6227(c) of this title, referred to in subsec. (b)(2)(B)(i), was redesignated section 6227(d) of this title by Pub. L. 105-34, title XII, § 1236(a), Aug. 5, 1997, 111 Stat. 1025.

AMENDMENTS

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 subparagraph (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 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.

Section 1232(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]."

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."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6226, 6227, 6228, 6229, 6230, 6234, 6255, 6501, 6511, 6512, 6601, 7422 of this title.

[§ 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 Secretary 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 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.)

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.

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SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6501, 7459, 7482 of this title.

APPENDIX E

Sec. 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.

Sec. 6235.

PERIOD OF LIMITATIONS ON MAKING ADJUSTMENTS.

(a) In General.-- Except as otherwise provided in this section, no adjustment under this subpart for any partnership taxable year may be made after the later of--

(1) the date which is 3 years after the latest of--

(A) the date on which the partnership return for such taxable year was filed,

(B) the return due date for the taxable year, or

(C) the date on which the partnership filed an administrative adjustment request with respect to such year under section 6227, or

(2) in the case of any modification of an imputed underpayment under section 6225(c), the date that is 270 days (plus the number of days of any extension consented to by the Secretary under paragraph (4) thereof) after the date on which everything required to be submitted to the Secretary pursuant to such section is so submitted, or

(3) in the case of any notice of a proposed partnership adjustment under section 6231(a)(2), the date that is 270 days after the date of such notice.

(b) Extension By Agreement.-- The period described in subsection (a) (including an extension period under this subsection) may be extended by an agreement

entered into by the Secretary and the partnership before the expiration of such period.

(c) Special Rule In Case of Fraud, Etc.--

(1) False Return.-- In the case of a false or fraudulent partnership return with intent to evade tax, the adjustment may be made at any time.

(2) Substantial Omission of Income.-- If any partnership omits from gross income an amount properly includible therein and such amount is described in section 6501(e)(1)(A), subsection (a) shall be applied by substituting "6 years" for "3 years".

(3) No Return.-- In the case of a failure by a partnership to file a return for any taxable year, the adjustment may be made at any time.

(4) Return Filed By Secretary.-- For purposes of this section, a return executed by the Secretary under subsection (b) of section 6020 on behalf of the partnership shall not be treated as a return of the partnership.

(d) Suspension When Secretary Mails Notice of Adjustment.-- If notice of a final partnership adjustment with respect to any taxable year is mailed under section 6231, the running of the period specified in subsection (a) (as modified by the other provisions of this section) shall be suspended--

(1) for the period during which an action may be brought under section 6234 (and, if a petition is filed under such section with respect to such notice, until the decision of the court becomes final), and

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(2) for 1 year thereafter.

NOTICE OF PROPOSED ADJUSTMENT

| | |
|--|----------------------------|
| Name of Taxpayer | Issue No. |
| West Ventures, L.P., F/K/A Sleiman Ventures L.P. | Short Terms Capital Losses |
| Name and title of person to whom delivered | Date: |
| | August 24, 2004 |

Entity for this proposed adjustment

Based on the information we now have available and our discussions with you, we believe the proposed adjustment listed below should be included in the revenue agent's report. However, if you have additional information that would alter or reverse this proposal, please furnish this information as soon as possible.

| Years | Amount | Account or return line | SAIN NO | Issue Code |
|-------|-------------|------------------------|---------|------------|
| 1999 | -62,370,000 | Schedule D - Line 1 | | |
| 1999 | -630,000 | Schedule D - Line 4 | | |
| | | | | |
| | | | | |
| | | | | |

Issue

Short Term Capital Losses and Capital Contributions

Reasons for Proposed Adjustment

See Attached 886 A with Attachments

Please Respond or or before 20 days,
or September 15, 2004 or which date
an RPA will be issued.

Taxpayer Representative's action(check one)

AGREED:

AGREED IN PART:

DISAGREED:

HAVE ADDITIONAL INFORMATION; Will submit by _____



Case Manager

Date:

| | | |
|--|--|-----------------------------|
| Form 886A | Department of the Treasury - Internal Revenue Service Explanation of Items | Schedule No. or Exhibit |
| Name of Taxpayer International At Investments | | Year/Period Ended 199912 |

Issues:

1. Is the short term loss claimed in the amount of \$62,370,000 on the sale of Sleiman Ventures Two partnership interest allowable?
2. Is the \$630,000 loss flow through from Sleiman Ventures (Two) allowable?

Facts:

On the partnership return form 1065 for the period ending 1999 West Ventures claimed a short term capital loss on the sale of a partnership interest in Sleiman Ventures Two as shown:

| <u>Transaction</u> | <u>Amount</u> |
|--------------------------------|----------------------|
| Sale of Sleiman Ventures (Two) | \$ 0 |
| Basis (6/23/99) | <u>\$ 62,370,000</u> |
| Loss | (\$ 62,370,000) |

The taxpayer claimed a \$630,000 loss from their 10% ownership interest in Sleiman Ventures (Two) L.P. interest.

The following steps preceded the worthlessness of the Sleiman Ventures (Two) partnership interests:

On 6/8/1998 Sleiman Ventures Limited Partnership was formed by Sleiman Ventures, Inc., a Nevada corporation (general partner) and Peter D. Sleiman, Anthony T. Sleiman, Joseph E. Sleiman and Eli T. Sleiman, Jr. (limited partners).

On date unknown FX Capital LLC, a Delaware limited liability company, FX Capital (Two) LLC..., FX Capital (Three) LLC, and FX Capital (Four) LLC were formed and one entity each were owned by Peter D. Sleiman, Anthony T. Sleiman, Joseph E. Sleiman and Eli T. Sleiman, Jr. respectively.

On 6/25/1999 Sleiman Ventures (Two) Limited Partnership was formed.

On 7/14/99 FX Capital LLC, a Delaware limited liability company, FX Capital (Two) LLC..., FX Capital (Three) LLC, and FX Capital (Four) LLC all entered into foreign exchange linked swap transactions with Deutsche Bank AG London