

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

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

**(B) Specified passive activity loss**

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

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

(ii) such passive activity loss so determined with respect to such partner’s taxable year in which or with which the adjustment year of such partnership ends.

**(C) Specified partner**

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

(i) is a partner of the publicly traded partnership referred to in subparagraph (A),

(ii) is described in section 469(a)(2), and

(iii) has a specified passive activity loss with respect to such publicly traded partnership,

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

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 2015 AMENDMENT

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

EFFECTIVE DATE OF REPEAL AND REENACTMENT

Repeal and reenacted section applicable to returns filed for partnership taxable years beginning after Dec. 31, 2017, with certain exceptions, see section 1101(g) of Pub. L. 114-74, set out as an Effective Date of 2015 Amendment note under section 6221 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-34, title XII, §1239(f), Aug. 5, 1997, 111 Stat. 1028, 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].”

**§ 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.)

**REPEAL AND REENACTMENT OF SECTION**

*Pub. L. 114-74, title XI, § 1101(a), (c)(1), (g), Nov. 2, 2015, 129 Stat. 625, 630, 638, provided that, applicable to returns filed for partnership taxable years beginning after Dec. 31, 2017, with certain exceptions, this section is repealed and a new section 6226 is enacted to read as follows:*

*§ 6226. Alternative to payment of imputed underpayment by partnership*

**(a) In general**

*If the partnership—*

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

*(2) at such time and in such manner as the Secretary may provide, furnishes to each partner of the partnership for the reviewed year and to the Secretary a statement of the partner's share of*

any adjustment to income, gain, loss, deduction, or credit (as determined in the notice of final partnership adjustment),

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

(b) Adjustments taken into account by partner

(1) Tax imposed in year of statement

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

(2) Adjustment amounts

The adjustment amounts determined under this paragraph are—

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

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

(3) Adjustment of tax attributes

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

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

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

(c) Penalties and interest

(1) Penalties

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

(2) Interest

In the case of an imputed underpayment with respect to which the application of this section is elected, interest shall be determined—

(A) at the partner level,

(B) from the due date of the return for the taxable year to which the increase is attributable (determined by taking into account any increases attributable to a change in tax attributes for a taxable year under subsection (b)(2)), and

(C) at the underpayment rate under section 6621(a)(2), determined by substituting "5 percentage points" for "3 percentage points" in subparagraph (B) thereof.

Pub. L. 114-113, div. Q, title IV, § 411(b)(1), (e), Dec. 18, 2015, 129 Stat. 3122, provided that, effective as if included in section 1101 of Pub. L. 114-74, this section (as added by Pub. L. 114-74, see note above) is amended by adding at the end the following new subsection:

(d) Judicial review

For the time period within which a partnership may file a petition for a readjustment, see section 6234(a).

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 2015 AMENDMENT

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

EFFECTIVE DATE OF REPEAL AND REENACTMENT

Repeal and reenacted section applicable to returns filed for partnership taxable years beginning after Dec. 31, 2017, with certain exceptions, see section 1101(g) of Pub. L. 114-74, set out as an Effective Date of 2015 Amendment note under section 6221 of this title.

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.

Pub. L. 105-34, title XII, § 1240(b), Aug. 5, 1997, 111 Stat. 1029, 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.

§ 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—