

partner participation in administrative proceedings, waiver of partner's rights, and settlement agreements.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

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

PART II—PARTNERSHIP ADJUSTMENTS

Sec.

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

Editorial Notes

AMENDMENTS

2018—Pub. L. 115-141, div. U, title II, § 206(p)(10), Mar. 23, 2018, 132 Stat. 1183, amended part II heading generally, reenacting heading without change.

§ 6225. Partnership adjustment by Secretary

(a) In general

In the case of any adjustments by the Secretary to any partnership-related items with respect to any reviewed year of a partnership—

(1) if such adjustments result in an imputed underpayment, the partnership shall pay an amount equal to such imputed underpayment in the adjustment year as provided in section 6232, and

(2) if such adjustments do not result in an imputed underpayment, such adjustments shall be taken into account by the partnership in the adjustment year.

(b) Determination of imputed underpayments

For purposes of this subchapter—

(1) In general

Except as otherwise provided in this section, any imputed underpayment with respect to any reviewed year shall be determined by the Secretary by—

(A) appropriately netting all partnership adjustments with respect to such reviewed year, and

(B) applying the highest rate of tax in effect for the reviewed year under section 1 or 11.

(2) Adjustments to distributive shares of partners not netted

In the case of any adjustment which reallocates the distributive share of any item from one partner to another, such adjustment shall be taken into account by disregarding so much of such adjustment as results in a decrease in the amount of the imputed underpayment.

(3) Adjustments separately netted by category

For purposes of paragraph (1)(A), partnership adjustments for any reviewed year shall first be separately determined (and netted as appropriate) within each category of items that are required to be taken into account separately under section 702(a) or other provision of this title.

(4) Limitation on adjustments that may be taken into account

If any adjustment would (but for this paragraph)—

(A) result in a decrease in the amount of the imputed underpayment, and

(B) could be subject to any additional limitation under the provisions of this title (or not allowed, in whole or in part, against ordinary income) if such adjustment were taken into account by any person,

such adjustment shall not be taken into account under paragraph (1)(A) except to the extent otherwise provided by the Secretary.

(c) Modification of imputed underpayments

(1) In general

The Secretary shall establish procedures under which the imputed underpayment amount may be modified consistent with the requirements of this subsection.

(2) Procedures for partners to take adjustments into account

(A) Amended returns of partners

Such procedures shall provide that if—

(i) one or more partners file returns for the taxable year of the partners which includes the end of the reviewed year of the partnership (and for any taxable year with respect to which any tax attribute is affected by reason of any adjustment referred to in clause (ii)),

(ii) such returns take into account all adjustments under subsection (a) properly allocable to such partners (and the effect of such adjustments on any tax attributes), and

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

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

(B) Alternative procedure to filing amended returns

Such procedures shall provide that, with respect to any partner referred to in subparagraph (A), the requirements of subparagraph (A) shall be treated as satisfied with respect to adjustments properly allocable to such partner if, in lieu of filing the returns described in such subparagraph—

(i) the amounts described in subparagraph (A)(iii) are paid by the partner,

(ii) the partner agrees to take into account, in the form and manner prescribed by the Secretary, the adjustments to the tax attributes of such partner referred to in subparagraph (A)(ii), and

(iii) such partner provides, in the form and manner specified by the Secretary (including, if the Secretary so specifies, in the same form as on an amended return), such information as the Secretary may require to carry out this subparagraph.

(C) Reallocation of distributive share

In the case of any adjustment which reallocates the distributive share of any item

from one partner to another, this paragraph shall apply with respect to any such partner only if the requirements of subparagraph (A) or (B) are satisfied with respect to all partners affected by such adjustment.

(D) Application of statute of limitations

In the case of adjustments referred to in subparagraph (A)(ii), sections 6501 and 6511 shall not apply with respect to any return filed for purposes of subparagraph (A)(i) or any amount paid under subparagraph (A)(iii) or (B)(i).

(E) Adjustments to tax attributes binding for affected taxable years of partner

The adjustments to the tax attributes of any partner provided for in subparagraph (A)(ii) or (B)(ii) shall be binding with respect to the taxable year of the partner which includes the end of the reviewed year of the partnership and any taxable years for which any tax attribute is affected by such adjustment. Any failure to so treat any such tax attribute shall be treated for purposes of this title in the same manner as a failure to treat a partnership-related item in a manner which is consistent with the treatment of such item on the partnership return within the meaning of section 6222.

(F)¹ Application to partnerships and S corporations in tiered structures

(i) In general

In the case of any partnership any partner of which is a partnership, subparagraph (A) or (B) may apply with respect to any partner (hereafter in this subparagraph referred to as the “relevant partner”) in the chain of ownership of such partnerships if—

(I) such information as the Secretary may require is furnished to the Secretary for purposes of carrying out this paragraph with respect to such partnerships (including any information the Secretary may require with respect to any chain of ownership of the relevant partner), and

(II) to such extent as the Secretary may require, each partnership in the chain of ownership between the relevant partner and the audited partnership satisfies the requirements of subparagraph (A) or (B).

(ii) Treatment of S corporations

For purposes of clause (i), an S corporation and its shareholders shall be treated in the same manner as a partnership and its partners.

(F)¹ Adjustments not treated as amended return

An administrative adjustment request under section 6227 and a partnership adjustment tracking report under section 6226(b)(4)(A) shall not be treated as a return for purposes of this paragraph.

(3) Tax-exempt partners

Such procedures shall provide for determining the imputed underpayment without re-

gard to the portion of the adjustment that the partnership demonstrates is allocable to a partner that would not owe tax by reason of its status as a tax-exempt entity (as defined in section 168(h)(2)).

(4) Modification of applicable highest tax rates

(A) In general

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

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

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

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

(i) In general

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

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

If the imputed underpayment is attributable to the adjustment of more than 1 item, and any partner’s distributive share of such items is not the same with respect to all such items, then the portion of the imputed underpayment to which the lower rate applies with respect to a partner under subparagraph (A) shall be determined by reference to the amount which would have been the partner’s distributive share of net gain or loss if the partnership had sold all of its assets at their fair market value as of the close of the reviewed year of the partnership.

(5) Certain passive losses of publicly traded partnerships

(A) In general

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

- (i) for determining the imputed underpayment without regard to the portion of the adjustment 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

¹ So in original. Two subpars. (F) have been enacted.

respect to any specified partner of such publicly traded partnership, the lesser of—

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

(C) Specified partner

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

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

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

(6) Other procedures for modification of imputed underpayment

The Secretary may by regulations or guidance provide for additional procedures to modify imputed underpayment amounts on the basis of such other factors as the Secretary determines are necessary or appropriate to carry out the purposes of this subsection.

(7) Year and day for submission to Secretary

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

(8) Decision of Secretary

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

(9) Modification of adjustments not resulting in an imputed underpayment

The Secretary shall establish procedures under which the adjustments described in subsection (a)(2) may be modified in such manner as the Secretary determines appropriate.

(d) Definitions

For purposes of this subchapter—

(1) Reviewed year

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

(2) Adjustment year

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

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

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

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

(Added Pub. L. 114-74, title XI, §1101(c)(1), Nov. 2, 2015, 129 Stat. 628; amended Pub. L. 114-113, div. Q, title IV, §411(a), Dec. 18, 2015, 129 Stat. 3121; Pub. L. 115-141, div. U, title II, §§202, 203(a), 206(b), (p)(1), Mar. 23, 2018, 132 Stat. 1173, 1174, 1178, 1182.)

Editorial Notes

PRIOR PROVISIONS

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

AMENDMENTS

2018—Subsec. (a). Pub. L. 115-141, §202(c)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) related to adjustment by the Secretary in the amount of any item of income, gain, loss, deduction, or credit of a partnership, or any partner's distributive share thereof.

Subsec. (b). Pub. L. 115-141, §202(a), amended subsec. (b) generally. Prior to amendment, subsec. (b) consisted of pars. (1) and (2) relating to determination of imputed underpayments in general and adjustments to distributive shares of partners not netted, respectively.

Subsec. (c)(2). Pub. L. 115-141, §203(a), amended par. (2) generally. Prior to amendment, par. (2) related to amended returns of partners.

Subsec. (c)(2)(F). Pub. L. 115-141, §206(b), added subpar. (F) relating to adjustments not treated as amended return.

Subsec. (c)(3). Pub. L. 115-141, §202(b)(1), substituted “without regard to the portion of the adjustment” for “without regard to the portion thereof”.

Subsec. (c)(4)(A). Pub. L. 115-141, §202(b)(2), substituted “with respect to any portion of the adjustment” for “with respect to any portion of the imputed underpayment” in introductory provisions.

Subsec. (c)(5)(A)(i). Pub. L. 115-141, §202(b)(3), substituted “without regard to the portion of the adjustment” for “without regard to the portion thereof”.

Subsec. (c)(7). Pub. L. 115-141, §206(p)(1), substituted “filed or submitted under this subsection” for “submitted pursuant to paragraph (1)”.

Subsec. (c)(9). Pub. L. 115-141, §202(c)(2), added par. (9).

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

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

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115-141 effective as if included in section 1101 of Pub. L. 114-74, see section 207 of Pub. L. 115-141, set out as a note under section 6031 of this title.

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114-113 effective as if included in section 1101 of Pub. L. 114-74, see section 411(e) of

Pub. L. 114-113, set out as a note under section 6031 of this title.

EFFECTIVE DATE

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

§ 6226. Alternative to payment of imputed underpayment by partnership

(a) In general

If the partnership—

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

(2) at such time and in such manner as the Secretary may provide, furnishes to each partner of the partnership for the reviewed year and to the Secretary a statement of the partner's share of any adjustment to a partnership-related item (as determined in the notice of final partnership adjustment),

section 6225 shall not apply with respect to such underpayment (and no assessment of tax, levy, or proceeding in any court for the collection of such underpayment shall be made against such partnership) 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

Except as provided in paragraph (4), 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 adjusted by the aggregate of the correction amounts determined under paragraph (2) for the taxable years referred to therein.

(2) Correction amounts

The correction 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 or decrease if the partner's share of the adjustments described in subsection (a) were taken into account for such taxable year, and

(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 or decrease 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 ad-

justed for purposes of applying such paragraph, and

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

(4) Treatment of partnerships and S corporations in tiered structures

(A) In general

If a partner which receives a statement under subsection (a)(2) is a partnership or an S corporation, such partner shall, with respect to the partner's share of the adjustment—

(i) file with the Secretary a partnership adjustment tracking report which includes such information as the Secretary may require, and

(ii)(I) furnish statements under rules similar to the rules of subsection (a)(2), or

(II) if no such statements are furnished, compute and pay an imputed underpayment under rules similar to the rules of section 6225 (other than paragraphs (2), (7), and (9) of subsection (c) thereof).

(B) Due date

For purposes of subparagraph (A), with respect to a partner's share of the adjustment, the partnership adjustment tracking report shall be filed, and the imputed underpayment shall be paid or statements shall be furnished, not later than the due date for the return for the adjustment year of the audited partnership.

(C) Partnership payment of tax if elected out of subchapter

In the case of a partnership which has elected the application of section 6221(b) with respect to the taxable year of the partnership which includes the end of the reviewed year of the audited partnership, this paragraph shall apply notwithstanding such election.

(D) Audited partnership

For purposes of this paragraph, the term "audited partnership" means, with respect to any partner described in subparagraph (A), the partnership in the chain of ownership originally electing the application of this section.

(E) Treatment of trusts

The Secretary shall prescribe such rules as may be necessary with respect to trusts which receive a statement under subsection (a)(2).

(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, or which is described in sub-