STATUTORY CHANGES IN PARTNERSHIP TAX AUDITS AND THE RESULTING NEED FOR CHANGES IN PARTNERSHIP AGREEMENTS

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I. INTRODUCTION

In November, 2015, Congress repealed the Tax Equity and Fiscal Responsibility Act of 1982[1] (TEFRA) partnership audit rules and provided new partnership audit rules (also applicable to Limited Liability Companies (LLC) electing to be taxed as partnerships) effective for tax years beginning after December 31, 2017.[2] The Bipartisan Budget Act of 2015[3] and technical amendments included in the 2016 Consolidated Appropriations Act[4] (collectively BBA) rewrote the Internal Revenue Code (I.R.C.) partnership audit provisions and inserted conforming amendments elsewhere in the code.[5] In May, 2017, the Internal Revenue Service (IRS) issued proposed regulations, to be used until final regulations are issued and sought comments due in August 14 of the same year.[6] The BBA imposes an audit regime that is fundamentally different from the partnership audit regimes that preceded it. Implementation of the BBA depends on the extensive structure of rules that the Internal Revenue Service (IRS) has presented for comment and implementation.

The BBA statutory provisions and IRS regulations impose on partnerships (as opposed to individual partners) the obligation to identify and pay any deficiency[7] unless the partnership meets the conditions required to elect out of the BBA audit rules[8] or chooses to shift payment to partners.[9]

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[1] P.L. 97-248 (1982); repealed by Pub. L. 114-74 §§ 1101(a), (b).

[2] I.R.C. § 6241(g) (2015, date of passage—most provisions effective Jan. 1, 2018).

[3] Pub. L. No. 114-74, §§ 1101(a)-(c).

[4] Pub. L. No. 114-113, Div. Q § 411.

[5] I.R.C. §§ 6221-6241 (2015).

[6] Centralized Partnership Audit Regime (REG-136118-15); 82 FR 27334; IRS-2017-0009; 26 CFR 301.

[7] I.R.C. § 6221(a) (2015).

[8] I.R.C. § 6221(b) (2015).

Individual partners are bound by the partnership level rulings on tax liability.[10] Each partnership must elect a single partnership representative (PR) who is the sole point of contact with the IRS during the audit and whose actions bind both the partnership and its individual partners.[11] Any deficiency is paid by the partnership in the year the adjustment becomes final, rather than by the individual partners, unless the partnership elects to push out payment of deficiencies found when the partnership is audited to those who were partners in the reviewed year.[12] Both the BBA and implementing regulations substantially upend the prior system of auditing individual partners, changing both procedures and each individual partner's substantive rights.

The new BBA tax audit structure makes it desirable to include in partnership and LLC agreements provisions that address how the partnership will handle the elections inter-partner obligations, and relations between the partnership, its partners, and the IRS under the new audit and assessment procedures. Partnership and LLC agreements should address who will be the PR and his or her obligations to the partnership and partners. The agreements should consider the obligation of reviewed year partners to audit year partners and to each other. Finally, agreements should address who will be responsible for payment of deficiencies, interest, and penalties.

The provisions of the BBA and its implementing regulations are described in the next section. The following section suggests partnership agreement provisions that address issues raised by the new tax audit rules and resulting changes in relations among partners or LLC members and their entities.

II. SUMMARY OF BBA CHANGES TO PARTNERSHIP AUDIT RULES

A. *The IRS Determines Partnership Tax Adjustments at the Partnership Level Unless the Partnership Elects Out of the Regulations: I.R.C. § 6221*

Adjustments to items of partnership income, gain, loss, deduction, or credit for the partnership taxable year and all partner distributive shares are assessed, adjusted, and collected at the partnership level instead of from individual partners.[13] However, a partnership required to furnish 100 or fewer

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[9] I.R.C. § 6226 (2015).
[10] I.R.C. § 6221(b)(1) (2015).
[11] I.R.C. § 6223(a) (2015).
[12] I.R.C. § 6226 (2015).
[13] I.R.C. § 6221(a) (2015). The definitions for each of these terms are found at Prop. Treas. Reg. § 301.6221(a)-1(b).

partner statements in a tax year to qualified partners may elect on its return to be excluded from the BBA rules (elect out) by notifying the IRS and each partner of the election.[14] To elect out all partners be qualified partners. Qualified partners include individuals, C corporations, foreign entities that would be treated as a C corporation if they were domestic entities, domestic partnerships and LLCs, S corporations, and the estate of a deceased partner.[15] Each shareholder of an S corporation must be furnished a statement, disclosed to the IRS, and receive one of the 100 or fewer partner statements permitted if the partnership chooses to elect out of the BBA audit regulations.[16] Single member LLC (disregarded entity) partners disqualify the partnership from electing out.[17] The IRS is directed to prescribe the manner of disclosure of name and taxpayer identification number of partners and S corporation shareholders.[18] The IRS is given authority to identify acceptable additional classes of foreign or domestic partners.[19]

Eligibility to elect out is measured by the number of statements furnished to eligible partners during the year, not simply the number of partners and S corporation shareholders.[20] The count includes both the statements issued to an S corporation and all statements issued to S corporation shareholders.[21] Thus, for example, a partnership that has 50 partners, including one S corporation partner with 50 shareholders has issued 101 statements, one to each partner including the S corporation, and one to each S corporation shareholder. It therefore does not qualify for election out of the partnership rules.[22]

The process of counting the number of statements issued can become quite complex.[23] For example, if a husband and wife separately own an interest in a partnership, they are counted as two partners because they receive separate statements.[24] However, a husband and wife who hold the partnership interest as community property and receive one statement are counted as one partner even though each owns a one half interest in the partnership share.[25] If a partner sells his or her interest to a non-partner during the tax year, both the selling partner and the purchasing partner

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[14] I.R.C. § 6221(b)(1) (2015).
[15] *Id.*
[16] I.R.C. § 6221(b)(2) (2105).
[17] Prop. Treas. Reg. § 301.6221(b)-1(b)(3)(ii).
[18] I.R.C. §§ 6221(b)(1), (2)(A) (2015).
[19] I.R.C. §§ 6221(b)(2)(B), (C) (2015).
[20] Prop. Treas. Reg. §§ 301.6221(b)-1(a), (b)(1)(ii).
[21] Prop. Treas. Reg. § 301.6221(b)-2(b)(2)(ii).
[22] Prop. Treas. Reg. § 301.6221(b)-2(b)(2)(iii), Ex. 4.
[23] Prop. Treas. Reg. § 301.6221(b)-2(b)(2)(iii).
[24] Prop. Treas. Reg. § 301.6221(b)-2(b)(2)(iii), Ex. 1.
[25] Prop. Treas. Reg. § 301.6221(b)-2(b)(2)(iii), Ex. 2.

receive statements for that year.[26] If issuing the two statements results in more than 100 statements being issued by the partnership the partnership cannot elect out of the regulations.[27] Similarly, if a partnership that would otherwise have issued 100 statements has to issue 101 statements because a partner dies during the tax year and one must be issued to the deceased partner for the period the partner was alive and another to his or her estate for part of the year covering the period after death the partnership becomes disqualified from electing out.[28]

An S corporation is an eligible partner even if one or more of its shareholders is not an eligible partner.[29] However, trusts, ineligible foreign entities, disregarded entities,[30] a nominee for another, or an estate of a deceased person other than a deceased partner are ineligible and disqualify the partnership from electing out.[31] A foreign entity is an eligible entity if it would be treated as a C corporation if it were a domestic entity.[32] Thus, the foreign entity qualifies if it is an association taxable as a per se corporation,[33] a corporation by default,[34] or a corporation by election.[35]

To elect out of the BBA regulations, the electing partnership must disclose to the IRS information about each person that was a partner at any time during the taxable year, including each partner's name, taxpayer identification number, Federal tax classification, a statement that each partner is eligible, and all other information the IRS requests.[36] It must also disclose the same information for each shareholder of an S corporation partner.[37] Finally, the partnership must notify each partner of the election within 30 days of making it.[38]

A partnership that has elected out of the BBA rules and is a partner of a partnership that has not elected out is subject to the BBA rules with respect to its interest in the non-electing partnership.[39]

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[26] Prop. Treas. Reg. § 301.6221(b)-2(b)(2)(iii), Ex. 3.
[27] *Id.*
[28] Prop. Treas. Reg. § 301.6221(b)-2(b)(2)(iii), Ex. 5.
[29] Prop. Treas. Reg. §§ 301.6221(b)-2(b)(3)(i); 301.6221(b)-3(iv), Ex. 2.
[30] Described in Treas. Reg. § 301.7701-2(c)(2)(i).
[31] Prop. Treas. Reg. § 301.6221(b)-2(b)(3)(ii).
[32] Prop. Treas. Reg. § 301.6621(b)-2(b)(3)(iii).
[33] Treas. Reg. §§ 301.7701-2(b)(1), (3)-(8).
[34] Treas. Reg. § 301.7701-3(b)(2)(i)(B).
[35] Treas. Reg. § 301.7701-3(c).
[36] Prop. Treas. Reg. § 301.6621(b)-(3)(c)(2).
[37] *Id.*
[38] Prop. Treas. Reg. § 301.6621(b)-(3)(d).
[39] Prop. Treas. Reg. § 301.6621(b)-3(d)(2), Ex. 2.

B. *Each Partner's Return Must Be Consistent with the Partnership's Return: I.R.C. § 6222*

Each partner must treat each item on his or her tax return that is attributable to a partnership consistently with its treatment on the partnership return.[40] Consistency includes consistent amount, timing, and characterization of each item.[41] Each partner's return must be consistent with the partnership's return and all Schedule K-1 partnership statements it issues even if the partnership incorporating the information from a K-1 has itself elected out of the rules unless the partner files notice of inconsistent treatment.[42]

Any discrepancy is treated as an underpayment caused by a mathematical or clerical error[43] unless the partner receives incorrect information from the partnership[44] or the partner files a notification of inconsistent treatment with the partner's return.[45] Treatment as a mathematical error means that the partner may not challenge IRS adjustment of the inconsistently reported items on a partner's return or determination of the resulting underpayment.[46] A partner's inconsistent treatment is permitted only with respect to those items specifically identified in the partner's notice of inconsistent treatment.[47] A partner must file a notice of inconsistent treatment if the partnership does not file a return and the partner takes into account partnership items when filing his or her return.[48] A notice of inconsistent return may not be used with respect to an administrative adjustment by the partnership.[49] It also may not be used with respect to a final decision in a proceeding before the IRS.[50] An adverse decision with respect to a partner's inconsistent position is not binding on the partnership unless the partnership is a party to the proceeding.[51]

If a partner receives incorrect information from the partnership and files a return relying on that inconsistent information, the partner is treated as if he or she gave notice of inconsistent treatment.[52] To utilize this exception to the

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[40] I.R.C. § 6222(a) (2015).
[41] Prop. Treas. Reg. § 301.6622-1(a)(1).
[42] Prop. Treas. Reg. § 301.6622-1(a)(5), Ex. 6.
[43] I.R.C. § 6222(b) (2015); Prop. Treas. Reg. § 301.6622-1(b)(2).
[44] I.R.C. § 6222(c)(2) (2015).
[45] I.R.C. § 6222(c)(1) (2015); Prop. Treas. Reg. § 301.6622-1(c)(1).
[46] Prop. Treas. Reg. § 301.6622-1(b)(1).
[47] Prop. Treas. Reg. §§ 301.6622-1(c)(1), (3).
[48] Prop. Treas. Reg. § 301.6622-1(a)(3).
[49] Prop. Treas. Reg. § 301.6622-1(c)(2).
[50] *Id.*
[51] Prop. Treas. Reg. § 301.6622-1(c)(4)(ii).
[52] Prop. Treas. Reg. § 301.6622-1(d)(1)(i).

general rule a partner must show that treatment was consistent with the information on the Schedule K-1 the partner received and make an election in writing within 60 days of receiving notice of the inconsistency.[53] If a treatment on a Schedule K-1 is unclear, upon audit the partner may file a statement of inconsistent position and explain why the partner's treatment is consistent with the schedule provided by the partnership.[54]

C. *BBA Tax Audits Occur at the Partnership Level, Are Managed Solely by the Partner Representative, and Bind All Partners to the Audit Results: I.R.C. § 6223*

Each partnership must designate either a partner or any other person with a substantial presence in the U.S. as its PR.[55] The PR has the sole authority to act on behalf of the partnership with respect to an audit by the IRS.[56] The actions of the PR as well as any final decision in a proceeding with respect to the partnership are binding on the partnership, all partners in the partnership, and all other persons whose tax liability is directly or indirectly determined by the IRS' decision.[57] The IRS may select the PR if the partnership does not.[58] There may be only one PR for each partnership taxable year; however, the PR may resign, be removed by the partnership in accordance with the terms of a partnership agreement, and replaced at the beginning of an audit or on filing an Administrative Adjustment Request (AAR).[59] Any person[60] with a substantial presence in the U.S., who is available to meet in person with the IRS, has a U.S. street address and telephone number, and U.S. taxpayer identification number may be a PR.[61] The partnership must designate a PR separately for each tax year.[62] A PR may resign by notifying the partnership and the IRS in writing of the resignation and may include designation of a successor PR with the

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[53] Prop. Treas. Reg. §§ 301.6622-1(d)(1)(i), (ii), (d)(2)(i).
[54] Prop. Treas. Reg. §§ 301.6622-1(d)(2)(iii), (d)(3), Ex.
[55] I.R.C. § 6223(a) (2015).
[56] *Id.*
[57] Prop. Treas. Reg. § 301.6223-2(a). Thus partnership and all partners are bound by the actions of the PR and by any final decision in a proceeding brought with respect to the partnership; I.R.C. § 6223(b).
[58] *Id.*
[59] Prop. Treas. Reg. §§ 301.6223-1(a), (d)(2).
[60] I.R.C. § 7701(a)(1) (2015).
[61] Prop. Treas. Reg. §§ 301.6223-1(b), (2).
[62] Prop. Treas. Reg. §§ 301.6223-1(c), (1).

resignation.[63] If no successor PR is named, the partnership will have an opportunity to designate the successor PR.[64]

An entity (such as an accounting or law firm) may be a PR only if the entity, in consultation with the partnership, appoints a single person to act for that entity as the entity partnership representative (EPR) for all purposes.[65] The EPR is appointed when the entity is designated.[66] An EPR may resign and may designate a successor, if the EPR does not, the partnership will be given an opportunity to designate a successor.[67] If the designated entity does not appoint an EPR the IRS may determine the EPR.[68]

A partnership may revoke a designation of a PR at commencement of an audit when the IRS serves a notice of administrative proceeding (NAP) on the partnership or when the partnership files an AAR.[69] During an administrative proceeding a revocation must include designation of a new PR.[70] A partnership may revoke a designation by notifying the PR and the IRS in writing and designating a successor.[71] The general partner who was a partner at the end of a tax year may sign a revocation of PR; a partner other than a general partner may sign a revocation of PR only if no general partner remains who is eligible to sign the revocation.[72] A member-manager of an LLC is treated as a general partner and a non-manager member is treated as other than a general partner.[73] If a PR is designated by the IRS, it can only be revoked by the partnership with the approval of the IRS.[74] The revocation and appointment must be made in writing, under penalties of perjury, stating that the partner is authorized to revoke the designation of PR, has provided a copy of the revocation to the PR whose designation is being revoked, and the designation of a new PR.[75] If the IRS determines there is no PR, the partnership has 30 days to select a new PR before the IRS selects one for the partnership.[76] If the IRS selects a PR, it will do so based on the majority of interest of partners, general knowledge of tax matters, administrative

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[63] Prop. Treas. Reg. § 301.6223-1(d)(1).
[64] *Id.*
[65] Prop. Treas. Reg. §§ 301.6223-1(b), (3)(i).
[66] Prop. Treas. Reg. §§ 301.6223-1(b), (3)(ii). The EPR is designated on the partnership return. *Id.*
[67] Prop. Treas. Reg. § 301.6223-1(d)(3).
[68] *Id.*
[69] Prop. Treas. Reg. §§ 301.6223-1(e)(2), (6), Ex. 1.
[70] Prop. Treas. Reg. §§ 301.6223-1(d)(1), (e)(6), Ex. 2.
[71] Prop. Treas. Reg. § 301.6223-1(e)(1). Failure to designate a successor PR makes the revocation invalid. *Id.*
[72] Prop. Treas. Reg. § 301.6223-1(e)(3)(i).
[73] Prop. Treas. Reg. § 301.6223-1(e)(3)(ii).
[74] Prop. Treas. Reg. § 301.6223-1(e)(r).
[75] Prop. Treas. Reg. § 301.6223-1(f)(1).
[76] *Id.*

operation of the partnership, the person's access to partnership books and records, and whether the person is a U.S. person.[77]

Termination of a PR does not affect the validity of decisions the PR made prior to the effective date of termination.[78] Except for a partner PR, no partner or other person may participate in an examination or other proceeding involving the partnership without the permission of the IRS.[79] No state law, partnership agreement, or other agreement may limit the authority of the PR or EPR.[80] Any partner recourse against a PR must be based on breach of contractual provisions in the partnership agreement or on breach of law.

D. *The IRS May Adjust Partnership Tax Liability and Partners' Distributive Shares of Income, Gain, Loss, Deduction, or Credits: I.R.C. § 6225*

The IRS may adjust any tax liability including adjustments to any partner's distributive share of tax liability.[81] A partnership adjustment is any adjustment to any item of income, gain, loss, deduction, or credit of a partnership, or any partner's distributive share thereof.[82] The amount of the adjustment the IRS determines to be underreported is the imputed underpayment.[83] The adjustments follow an IRS audit, negotiations between the partnership's PR and the IRS, and requests by the partnership for modification based on additional information provided by individual partner amendments to initial returns or through the PR.

Imputed underpayments are determined initially by netting all adjustments of tax items and multiplying the net amount by the highest statutory rate of tax for the reviewed year, which is the year to which the item being adjusted relates.[84] When the IRS completes its initial audit it issues a notice of proposed partnership adjustment (NOPA) based on application of the highest statutory tax rate to the amount it claims is owed by all partners.[85] The imputed underpayment is then negotiated with the PR and is determined after exchange of information, review of partner provided

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[77] Prop. Treas. Reg. § 301.6223-1(f)(6).
[78] Prop. Treas. Reg. § 301.6223-2(b).
[79] Prop. Treas. Reg. § 301.6223-2(c). *See also* Prop. Treas. Reg. § 301.6223-2(d), Ex. 1-5.
[80] *Id.*
[81] I.R.C. § 6225(a) (2015).
[82] I.R.C. § 6241(2) (2015); Prop. Treas. Reg. §§ 301.6221(a)-1(b)(1), (2); Prop. Treas. Reg. §§ 301.6241-1(a)(1), (6).
[83] I.R.C. § 6225(a) (2015); I.R.C. § 6242(b) (2015); Prop. Treas. Reg. § 301.6241-1(a)(3).
[84] I.R.C. § 6225(b)(1) (2015); I.R.C. § 6225(d)(1) (2015).
[85] Prop. Treas. Reg. § 301.6225-1(a)(2).

evidence of tax rates applicable to each individual partner, and any appeal.[86] The applicable rates of tax are applied to each partner's distributive share.[87] Adjustments that only affect partners' distributive shares are disregarded and are not netted.[88] Adjustments are taken in the adjustment year, which is the year in which a decision as to an imputed underpayment becomes final[89] and all challenges have been adjudicated and determined, either by IRS final partnership adjustment, or by final court decision.[90] Adjustments taken in the adjustment year include adjustments to partners' distributive shares even if there is no net underpayment by the partnership.[91]

Imputed underpayments are grouped into different categories and adjustments are computed for each group; they are then netted.[92] The imputed underpayment paid by the partnership is calculated by multiplying the total netted partnership adjustment by the rate of Federal income tax adjusted to reflect the applicable tax rate of different partners.[93] There are four groupings used by the IRS in its analysis, 1) reallocation grouping of distributive shares, 2) credit grouping of items that are taken as credits on a partnership return, 3) creditable expenditure grouping, and 4) a residual grouping (that can be made up of sub-groupings) of any remaining adjustments.[94]

Each partnership adjustment that reallocates the distributive share of an item from one or more partners to other partners is a separate reallocation grouping.[95] Adjustments within each grouping are netted together; they are not netted against other groupings.[96] Only positive adjustments are taken into account in calculating the total netted partnership adjustments.[97] Net non-positive adjustments in a grouping (i.e. those that do not result in an imputed underpayment) are disregarded.[98] There can be more than one imputed

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[86] *Id.* The negotiation process proceeds through use of an Administrative Adjustment Request (AAR), discussed infra; *see* Prop. Treas. Reg. § 301.6225-2(d).
[87] I.R.C. §§ 6225(b)(3), (4) (2015). If partner distributive shares vary from item to item the portion of an imputed adjustment to which different tax rates apply is determined by assuming the distributive share of each partner when the partnership is sold at fair market value; [87] I.R.C. § 6225(c)(4)(B) (2015).
[88] I.R.C. § 6225(c)(2) (2015).
[89] Prop. Treas. Reg. § 301.6241-1(a)(1).
[90] I.R.C. § 6225(d)(2) (2015).
[91] Prop. Treas. Reg. §§ 301.6225-1(a)(3), (b); 301.6225-2(f), Ex. 3.
[92] Prop. Treas. Reg. § 301.6225-1(d)(1).
[93] Prop. Treas. Reg. §§ 301.6225-1(c)(1), (2).
[94] Prop. Treas. Reg. § 301.6225-1(d)(2)(i-v).
[95] Prop. Treas. Reg. § 301.6225-1(d)(2)(ii).
[96] Prop. Treas. Reg. § 301.6225-1(d)(e)(3)(i).
[97] Prop. Treas. Reg. § 301.6225-1(d)(e)(3)(iii).
[98] Prop. Treas. Reg. § 301.6225-1(d)(2)(ii).

underpayment.[99] General imputed underpayments are computed separately from specific imputed underpayments.[100]

There is only one general imputed underpayment category, calculated based on all adjustments other than specific imputed underpayment categories.[101] There can be multiple specific imputed underpayment categories, which are adjustments to items allocated to one partner or group of partners that had similar characteristics or participated in similar transactions, special allocations or allocations involving some, but not all, partners.[102]

For example, an increase of $5 above reported income and an increase of $10 above reported expenses results in a zero adjustment because the negative adjustment caused by the increase in reported expenses is ignored in netting to the extent it exceeds the increase in income.[103] When the IRS finds that income reported as long term capital gain is actually ordinary income tax, liability increases by the full amount of the tax rate multiplied by ordinary income.[104] Because the decrease in capital gain was a non-positive adjustment in a separate category from the increase in ordinary income, only the increase in ordinary income, a net positive adjustment is counted.[105] Negative adjustments resulting in lower tax liability may be reflected in an audit only if they are in the same category as positive adjustments and only to the extent they offset positive adjustments. If the statute of limitations has not run, pursuant to an audit, partners may file amended returns to take advantage of reductions in tax liability found by the IRS and not reflected in the final partnership adjustment.[106]

A partnership may request one or more modifications of proposed imputed underpayments set forth in a NOPA[107] as a result of 1) individual partner amended returns accompanied by full payment or requesting a refund[108] 2) modification with respect to a tax exempt partner,[109] 3) modifications based on a tax rate lower than the highest applicable tax rate,

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[99] Prop. Treas. Reg. § 301.6225-1(e)(1)(i).
[100] Prop. Treas. Reg. § 301.6225-1(e)(2)(i). *See also* Prop. Reg. § 301.6225-1(f), Ex. 2, 3 for illustrations.
[101] Prop. Treas. Reg. § 301.6225-1(e)(2)(ii).
[102] Prop. Treas. Reg. § 301.6225-1(e)(2)(iii).
[103] Prop. Treas. Reg. § 301.6225-1(f), Ex. 1.
[104] Prop. Treas. Reg. § 301.6225-1(f), Ex. 4.
[105] *Id.*
[106] Prop. Treas. Reg. § 301.6225-2(d)(2)(v)(A). It may be after the statute of limitations has run if it relates to adjustments in a partnership imputed underpayment, *see* Prop. Treas. Reg. § 301.6225-2(d)(2)(v)(B).
[107] Prop. Treas. Reg. § 301.6225-2(a).
[108] Prop. Treas. Reg. § 301.6225-2(d)(2).
[109] Prop. Treas. Reg. § 301.6225-2(d)(3).

such as substituting a corporate tax rate for a personal tax rate,[110] 4) tax treatment of passive losses of publicly traded partnerships, [111] 5) modification of the number and composition of imputed underpayments,[112] 6) partnerships with partners that are qualified investment entities[113] describing treatment of underpayment as deficiency dividends,[114] 7) Partner closing agreements for which payment was made that have been entered into with the IRS,[115] and 8) modifications not otherwise described that the partnership requests and to which the IRS agrees.[116]

A tax rate modification reduces the tax rate applied that is used to calculate the total netted partnership adjustment with respect to an imputed underpayment.[117] Other modifications are treated as rate modifications if they affect the rate applied to a partnership adjustment.[118] To determine the modification, each partner's distributive share of the imputed underpayment is identified, the applicable tax rate for that partner to the partner's distributive share is computed, and individual adjustments are summed.[119] If special allocations are altered by the imputed underpayment determination, the adjustment is determined by calculating the amount of gain or loss reflecting each partner's distributive share after adjustment that would have resulted if the partnership had sold all of its assets at their fair market value at the close of the reviewed year.[120]

Taxpayer requests for modification must be submitted in accordance with the applicable IRS forms and instructions.[121] Each submission must state and substantiate the facts supporting the request in accordance with the requirements the IRS provides based on the applicable specific facts and circumstances.[122] The information required can include a detailed description of the structure, allocations, ownership and ownership changes of each of its direct, indirect, and pass through partners as well as the terms of the partnership agreement for each tax year.[123] The modification request must be

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[110] Prop. Treas. Reg. § 301.6225-2(d)(4).
[111] Prop. Treas. Reg. § 301.6225-2(d)(5).
[112] Prop. Treas. Reg. § 301.6225-2(d)(6).
[113] Under I.R.C. § 860 (2015).
[114] Prop. Treas. Reg. § 301.6225-2(d)(7).
[115] Prop. Treas. Reg. § 301.6225-2(d)(8).
[116] Prop. Treas. Reg. § 301.6225-2(d)(9).
[117] Prop. Treas. Reg. § 301.6225-2(b)(3).
[118] *Id.*
[119] Prop. Treas. Reg. § 301.6225-2(b)(3)(iii).
[120] Prop. Treas. Reg. § 301.6225-2(b)(3)(iv).
[121] Prop. Treas. Reg. § 301.6225-2(c)(1).
[122] Prop. Treas. Reg. § 301.6225-2(c)(2)(i).
[123] Prop. Treas. Reg. § 301.6225-2(c)(2)(ii).

filed within 270 days after the mailing date of the NOPPA unless the IRS agrees to extend the period or it is waived by mutual agreement.[124]

A partnership takes adjustments that do not result in an imputed underpayment into account in the adjustment year, generally as a reduction in non-separately stated income or loss.[125] Separately stated items[126] are taken into account by the partnership as a reduction or increase.[127] Adjustments to credits are taken into account as separately stated items.[128] If a reallocation adjustment among partners does not result in an imputed underpayment it is handled[129] as a separately or non-separately stated item.[130] If a reviewed year partner is not an adjustment year partner the adjustment is allocated to the successor of the reviewed year partner if identifiable; if not, for example, if the interest was sold back to the partnership, it is allocated among the remaining partners.[131] However, if the partnership elects to push payment out to the individual partners,[132] then the reviewed year partners take the adjustments into account individually in the adjustment year rather than pursuant to the provisions of I.R.C. § 6225.[133]

E. *Each Partnership May Push Out of Payment of Imputed Underpayments to Reviewed Year Partners: I.R.C. § 6226*

Within 45 days of a notice of final partnership adjustment the partnership may notify the IRS and all partners for the reviewed year that each reviewed year partner will have to pay the partner's distributive share of the final partnership adjustment.[134] If the partnership appeals the imputed underpayment to court it must still make the election to push out to reviewed year partners the payment of the assessment within 45 days of the mailing date of the final partnership assessment.[135] The partnership making the election "furnishes to each partner of the partnership for the reviewed year and to the Secretary [i.e. the IRS] a statement of the partner's share of any adjustment to income, gain, loss, deduction, or credit (as determined in the

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[124] Prop. Treas. Reg. § 301.6225-2(c)(3).
[125] Prop. Treas. Reg. §§ 301.6225-3(a), (b)(1).
[126] Under I.R.C. § 702 (2015).
[127] Prop. Treas. Reg. § 301.6225-3(b)(2).
[128] Prop. Treas. Reg. § 301.6225-3(b)(3).
[129] In accordance with the provisions of I.R.C. § 702 (2015).
[130] Prop. Treas. Reg. § 301.6225-3(b)(4).
[131] *Id.*
[132] Pursuant to I.R.C. § 6226 (2015).
[133] The adjustment is taken into account in accordance with Prop. Treas. Reg. § 301.6226-3 rather than in accordance with Prop. Treas. Reg. §§ 301.6225-3(a), (b); Prop. Treas. Reg. § 301.6225-3(b)(6).
[134] I.R.C. § 6226(a)(1) (2015); Prop. Treas. Reg. § 301.6226-1(c)(3).
[135] Prop. Treas. Reg. § 301.6226-1(e).

notice of final partnership adjustment)… ."[136] Once made, the election may only be revoked with consent of the IRS.[137]

Each reviewed year partner pays the tax in the taxable year that includes the date the statement of final adjustment is issued.[138] The additional tax due includes both the amount that tax would have increased in the reviewed year and the increase in subsequent years affected by the change in taxes for the reviewed year.[139] The partners are also liable for penalties and interest.[140] Interest is determined at the partner level from the due date for the reviewed year of the underpayment at the rate determined in I.R.C. § 6621(a)(2) (the short term Federal funds rate) plus 5 percent instead of 3 percent otherwise required by that provision.[141]

If the IRS issues more than one imputed underpayment,[142] the partnership may elect to push out to partners one or all of the imputed underpayments assessed.[143] Upon making the election to push out payment to partners, the individual partners become obligated to take into account their share of partnership adjustments, including penalties and interest.[144] If the partnership makes the election, the individual partners, rather than the partnership itself, become liable for payment of both their share of partnership liabilities and liabilities allocated to individual partners.[145] The election must be signed by the PR and include; 1) the name and Taxpayer Identification Number (TIN) of the partnership, 2) the taxable year to which the election relates, 3) a copy of the final partnership adjustment or adjustments and to which the alternate payment request applies, 4) each reviewed year partner's name, address, and correct TIN, and 5) other information requested on applicable IRS forms.[146] Each partner's allocable share of the partnership imputed underpayment is binding on the partner.[147]

A partnership pushing out payment to the partners must provide notice to each reviewed year partner and copy the IRS in a statement separate from partner K-1 adjustments or other statements that identifies each partner's share of partnership adjustments with respect to the imputed underpayment for each reviewed year.[148] The statements must be provided within 60 days of

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[136] I.R.C. § 6226(a)(2) (2015).
[137] *Id.*
[138] I.R.C. § 6226(b)(1) (2015).
[139] I.R.C. §§ 6226(b)(2), (3) (2015).
[140] I.R.C. §§ 6226(c)(1), (2) (2015).
[141] I.R.C. § 6226(c)(2) (2015).
[142] *See* Prop. Treas. Reg. § 301.6225-1(e).
[143] Prop. Treas. Reg. § 301.6226-1(a).
[144] Prop. Treas. Reg. § 301.6226-1(c)(1).
[145] Prop. Treas. Reg. § 301.6226-1(c)(2).
[146] Prop. Treas. Reg. § 301.6226-1(c)(4).
[147] Prop. Treas. Reg. § 301.6226-1(d).
[148] Prop. Treas. Reg. § 301.6226-2(a).

the later of the expiration of the time to file a petition for court review or the date of the court's final decision.[149] The partnership must be reasonably diligent in trying to locate the correct address of each reviewed year partner if a statement sent to the partner's last known address is returned as undeliverable.[150] If the partnership makes an error in a statement it may provide a corrected statement to the partner with a copy to the IRS.[151] If the error is found within the 60 day period correction is made automatically; however, if the correction is found after the 60 day period the IRS must approve issue of the corrected statement or statements.[152] If the error is discovered by the IRS, it may require the partnership to provide corrected statements.[153] The statements to partners (and the IRS) must include; 1) partner name and TIN, 2) current or last known address, 3) share of items as originally reported for the reviewed year, 4) share of partnership adjustments, 5) modifications applicable to reviewed year partner, 6) amounts attributable to adjustments of tax attributes for any intervening year resulting from adjustments in the reviewed year, 7) penalties, additions to tax, or other additional amounts, 8) safe harbor amount, and, if applicable, interest safe harbor amount, 9) date statement is furnished, 10) partnership taxable year to which the adjustments relate, and 11) any other information the IRS specifies.[154] Generally, the adjustments are reported to each reviewed year partner in the same manner as each adjusted item was originally allocated to the reviewed year partner.[155] If the item was not previously reported on the partnership return, it is reported as it would have been reported if included.[156] An adjustment that involves a specific allocation "to a specific partner or in a specific manner" is determined by the determination that makes the specific adjustment.[157]

The regulations state, "[i]f the reviewed year partner filed an amended return … or entered into a closing agreement … and the imputed underpayment … was determined without regard to the adjusted items in the amended return or in the closing agreement, such adjustments are disregarded for purposes of determining each reviewed year partners share of the adjustments under paragraph (f)(1) of this section." The regulations continue by stating, "[h]owever, these modifications are listed separately on the statements described in paragraph (a) [addressing the statements required

[149] Prop. Treas. Reg. § 301.6226-2(b)(1).
[150] Prop. Treas. Reg. § 301.6226-2(b)(2); *see also* Prop. Treas. Reg. § 301.6226-2(c), Ex. 1, 2.
[151] Prop. Treas. Reg. § 301.6226-2(d)(1).
[152] Prop. Treas. Reg. § 301.6226-2(d)(2).
[153] Prop. Treas. Reg. § 301.6226-2(d)(3).
[154] Prop. Treas. Reg. § 301.6226-1(e)(1)-(11).
[155] Prop. Treas. Reg. § 301.6226-1(f)(1)(i).
[156] Prop. Treas. Reg. § 301.6226-1(f)(1)(ii).
[157] Prop. Treas. Reg. § 301.6226-1(f)(1)(iii).

by paragraphs (e) and (f) of § 301.6226-2] of this section."[158] It is not clear from this language whether the closing agreement exempts the partner from further obligations or the adjustments are offsets to any adjustment otherwise required by the underpayment. Penalties and additions to tax are reported to reviewed year partners in the same proportion as each partner's share of the adjustment itself.[159]

The partnership is required to calculate a safe harbor amount of not less than zero for each reviewed year partner.[160] The regulations state, "[t]he safe harbor amount …is calculated in the same manner as the imputed underpayment under § 301.6225-1 except that each reviewed year partner's share of the partnership adjustments on the statement…are substituted as the partnership adjustments taken into account for purposes of determining the imputed underpayment under § 301.6225-1."[161] Any partner's amended return or closing agreement and imputed underpayment to which Prop. Treas. Reg. § 301.6226-1 applies is determined without regard to the adjustments on the amended return or closing agreement when determining a partner's safe harbor amount.[162] However, an exception is contained in the next section which states, "if the reviewed partner filed an amended return or a closing agreement and the imputed underpayment under section 6225 to which an election under § 301.6226-1 applies is determined without regard to the adjustments taken into account on the amended return or in the closing agreement, such adjustments are disregarded in determining that partner's safe harbor amount."[163] The interest safe harbor amount for individuals with calendar taxable years is calculated from the due date without extensions of the original return to the due date for the additional payment.[164] An example in the regulations illustrates that payment in an amended return is taken into account in determining the partner's remaining payment obligation.[165]

The initial tax paid by a partner is increased by any additional tax in subsequent years, penalties, and interest.[166] The additional tax is the aggregate of the adjustment amounts of the general I.R.C. § 6226 rules[167] or the safe harbor amount if the alternative simplified safe harbor election is made.[168] The correction amount for the reviewed year is the amount by which

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[158] Prop. Treas. Reg. § 301.6226-1(f)(2).
[159] Prop. Treas. Reg. § 301.6226-1(f)(3).
[160] Prop. Treas. Reg. § 301.6226-1(g)(1).
[161] Prop. Treas. Reg. § 301.6226-1(g)(2)(i).
[162] Prop. Treas. Reg. § 301.6226-1(g)(2)(ii)(A).
[163] Prop. Treas. Reg. § 301.6226-1(g)(2)(ii)(B).
[164] Prop. Treas. Reg. § 301.6226-1(g)(2)(iii).
[165] *See* Prop. Treas. Reg. § 301.6226-3(g), Ex. 5.
[166] Prop. Treas. Reg. § 301.6226-3(a).
[167] Under Prop. Treas. Reg. § 301.6226-3(b).
[168] Under Treas. Reg. § 301.6226-3(c).

the partner's tax increases by taking into account the partnership adjustments allocated to the partner.[169] The computation corrects for any amendment to the reviewed year tax made by the partner[170] as well as any other amounts previously collected[171] and any rebates.[172] A qualified investment entity may issue deficiency dividends to its investors.[173] A reviewed year partner may elect to pay the safe harbor amount instead of computing the additional reporting year tax.[174] Interest on the amount of the correction (including penalties) is added for the time from the year or years in which an adjustment occurred until the amount is paid.[175] The interest rate is computed using the underpayment rate defined at I.R.C. § 6621(a)(2) substituting 5 percentage points above the defined rate instead of 3 percentage points found in I.R.C. § 6221(a)(2)(B).[176]

F. *Administrative Adjustment Requests May Either Amend Previously Filed Returns or Modify Initial Tax Rates Used to Compute Underpayments: I.R.C. § 6227*

Any partnership may correct errors found in an item or items of a previously filed return by filing an Administrative Adjustment Request (AAR).[177] The administrative adjustment is both determined and taken into account in the partnership taxable year in which the request is made.[178] It is computed in the same manner as adjustments paid by either the partnership[179] or by the individual partners from the reviewed year.[180] If the adjustment is a reallocation among partners that would not result in an imputed underpayment it must be pushed out to the partners.[181] "A partner may not file an AAR except if the partner is doing so on behalf of the partnership in the partner's capacity as the partnership representative…or if the partner is a

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[169] Prop. Treas. Reg. § 301.6226-3(b)(2).
[170] Prop. Treas. Reg. § 301.6226-3(b)(2)(i)(A).
[171] Prop. Treas. Reg. § 301.6226-3(b)(2)(i)(B).
[172] Prop. Treas. Reg. § 301.6226-3(b)(2)(ii).
[173] In accordance with I.R.C. § 860 (2015); Prop. Treas. Reg. § 301.6226-3(b)(4).
[174] Prop. Treas. Reg. § 301.6226-3(c).
[175] Prop. Treas. Reg. § 301.6226-3(d).
[176] Prop. Treas. Reg. § 301.6226-3(d)(4). Also see the examples illustrating how the computations are made at Prop. Treas. Reg. § 301.6226-3(f).
[177] I.R.C. § 6227(a) (2015).
[178] I.R.C. § 6227(b) (2015).
[179] I.R.C. § 6227(b)(1) (2015); *see also* Prop. Treas. Reg. § 301.6227-2(b).
[180] I.R.C. § 6227(b)(2) (2015); *see also* Prop. Treas. Reg. § 301.6227-2(c). If treatment under I.R.C. § 6226 (2015) is elected, the increase in markup over the § 6621 interest rate remains at 3 percent instead of rising to 5 percent; I.R.C. § 6226(b)(2) (2015).
[181] I.R.C. § 6227(b)(2) (2015); *see also* Prop. Treas. Reg. §§ 301.6227-3; 301.6241-1(a)(9).

partnership-partner [a partnership that holds an interest in another partner[182]] filing an AAR under § 301.6227-3(c)."[183]

The partnership must file an AAR not more than 3 years after the later of the date on which the partnership return for the requested year is filed or the last day for filing a partnership return for that year (without extension).[184] A request for administrative adjustment cannot be filed after commencement of an administrative proceeding by the IRS.[185] The AAR filed with the IRS must include the adjustments requested, any notification required to be made reviewed year partners, and any other information requested by the IRS.[186] Statements provided to partners by the partnership resulting from an AAR are binding on the partners.[187] The AAR may be adjusted along with all other components of a partnership return if the IRS subsequently commences an administrative proceeding.[188]

Whether an AAR results in an imputed underpayment[189] in the reviewed year[190] and the amount of that underpayment is determined in accordance with the rules under Prop. Treas. Reg. § 301.6225-2(d)(4).[191] Once the IRS has determined an imputed underpayment the partnership may request modification of the amount of an imputed underpayment, to adjust tax rates through treatment of tax-exempt partners,[192] modification of the applicable tax rate,[193] treatment of specified passive activity losses[194] and deficiency dividends for qualified investment entities.[195] The partnership must; 1) notify the IRS of any modification, 2) describe the effect of the modification on the imputed underpayment, 3) explain the basis of the modification, and 4) provide documentation to support eligibility for the modification.[196] Whether adjustments result in an imputed underpayment or not the partnership must provide new statements to each partner and provide copies of the statements to the IRS.[197]

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[182] Prop. Treas. Reg. § 301.6241-1(a)(7).
[183] Prop. Treas. Reg. § 301.6227-3(a).
[184] I.R.C. § 6227(c) (2015); *see also* Prop. Treas. Reg. § 301.6227-1(b).
[185] *Id.*
[186] Prop. Treas. Reg. § 301.6227-1(c)(2); Prop. Treas. Reg. § 301.6227-1(d). The notices to partners must also be provided to the IRS and must include the contents generally required in notices to partners and stated in Prop. Treas. Reg. § 301.6227-1(e).
[187] Prop. Treas. Reg. § 301.6227-1(f).
[188] Prop. Treas. Reg. § 301.6227-1(g).
[189] Defined at Prop. Treas. Reg. § 301.6241-1(a)(3).
[190] Defined at Prop. Treas. Reg. § 301.6241-1(a)(8).
[191] Prop. Treas. Reg. § 301.6227-2(a)(1).
[192] Prop. Treas. Reg. § 301.6225-2(d)(3).
[193] Prop. Treas. Reg. § 301.6225-2(d)(4).
[194] Prop. Treas. Reg. § 301.6225-2(d)(5).
[195] Prop. Treas. Reg. §§ 301.6225-2(d)(7); 301.6227-2(a)(2).
[196] Prop. Treas. Reg. § 301.6227-2(a)(2)(ii)(A)-(D).
[197] Prop. Treas. Reg. § 301.6227-2(d).

Payment to the IRS is due on the date adjustments are requested[198] unless the partnership elects to push payment out to the reviewed year partners.[199] If the election to push payments out to partners is made, each partner pays its share of the adjustments requested in the imputed underpayment resulting from the adjustment requested in the AAR.[200] The additional tax is paid on the due date in the reporting year.[201] If the partner is entitled to a refund because of an overpayment, the partner must file for it in a refund proceeding.[202]

G. *Rules Applicable to Notice of Proceedings and Notice of Adjustments: I.R.C § 6231*

To initiate an audit the IRS provides the partnership and its PR a notice of administrative proceeding at the partnership level with respect to an adjustment of any item.[203] That notice is followed by a notice of proposed partnership adjustment,[204] and a notice of final partnership adjustment resulting from such proceeding.[205] The notice of final partnership adjustment can be mailed no earlier than 270 days after the notice of proposed partnership adjustment.[206] Only one notice of final partnership adjustment is permitted for a taxable year unless the IRS finds fraud, malfeasance, or misrepresentation of a material fact.[207] By agreement with the partnership a notice of final adjustment may be rescinded, in which case, no notice is deemed to have been issued.[208]

H. *Assessment, Collection, and Payment Occurs in the Adjustment Year: I.R.C. § 6232*

An imputed underpayment is assessed and collected with respect to the reviewed year to be paid as if it were imposed for the adjustment year.[209] If a partnership files an administrative adjustment, it is paid in the tax year at the

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[198] Prop. Treas. Reg. § 301.6227-2(b)(1).
[199] Prop. Treas. Reg. § 301.6227-2(c).
[200] Prop. Treas. Reg. § 301.6227-3(a).
[201] Prop. Treas. Reg. § 301.6227-3(b)(1).
[202] Prop. Treas. Reg. § 301.6227-3(b)(3), Ex. 2.
[203] I.R.C. § 6231(a)(1) (2015).
[204] I.R.C. § 6231(a)(2) (2015).
[205] I.R.C. § 6231(a)(3) (2015).
[206] *Id.*
[207] I.R.C. § 6231(b)(1) (2015). Note; however, that a notice of correction of a mathematical error is not considered a notice for this purpose, I.R.C. § 6232(d)(1)(A) (2015).
[208] I.R.C. § 6231(c) (2015).
[209] I.R.C. § 6232(a) (2015).

time the request for administrative adjustment is filed.[210] No assessment, levy, or collection proceeding may be begun until 90 days after the later of issue of a notice of final adjustment, or, if the final notice is appealed, a final court decision;[211] however, the partnership can waive the restriction.[212] If the partnership is notified that an adjustment to an item is required due to a mathematical or clerical error, rules similar to the rules of I.R.C. § 6213(b)(1),(2) apply.[213]

I. *Interest and Penalties Imposed: I.R.C. § 6233*

Interest and penalties are determined beginning the day after the return due date for the reviewed year and ending on the return due date on which payment must be made.[214] Penalties are "determined at the partnership level as if such partnership had been an individual subject to tax.[215] If the imputed underpayment is not paid by the due date additional interest and penalties accrue on the unpaid tax in the adjustment year.[216] Penalties are determined in accordance with I.R.C. § 6651(a)(2), which treats the penalty as an underpayment of tax under Chapter 68, Part II, subchapter A.[217]

J. *Partnership Judicial Review of Final IRS Adjustment: I.R.C. § 6234*

Within 90 days after the date on which a notice of final partnership adjustment is mailed, the partnership may file a petition for adjustment with the Tax Court, District Court of the United States for the district of the partnership's principal place of business, or Court of Federal Claims.[218] The partnership must deposit the amount of the underpayment with the IRS on the date of filing a petition with the District Court or Court of Federal

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[210] *Id.*
[211] I.R.C. § 6232(b) (2015). A premature action by the IRS may be enjoined by a court; I.R.C. § 6232(c) (2015).
[212] I.R.C. § 6232(d)(2) (2015).
[213] I.R.C. § 6232(d)(1)(A) (2015). A partnership is a partner in another partnership, failure to comply with a final notice or final court decision is treated as a mathematical or clerical error for collection purposes to which I.R.C. § 6213(a)(2) (2015) does not apply; I.R.C. § 6232(d)(1)(B) (2015).
[214] I.R.C. § 6233(a)(2) (2015).
[215] I.R.C. § 6233(a)(3) (2015).
[216] I.R.C. §§ 6233(b)(1), (2) (2015).
[217] I.R.C. § 6233(b)(3) (2015). Defenses to imposition of penalties are discussed at Prop Treas. Reg. §§ 301.6221(a)-1(c)(1), (2). They generally follow the traditional defenses against penalties, including reasonable cause; but not reasonable cause with respect to accuracy related penalties.
[218] I.R.C. § 6234(a) (2015).

Claims.[219] The deposit is not treated as a payment for purposes other than Chapter 67.[220] The courts have jurisdiction to determine partnership income, gain, loss, deduction, or credit, allocation among the partners, and penalties.[221] A decision from any of the three courts is appealable.[222] If a court dismisses the action, the dismissal is treated as upholding the notice of final partnership adjustment.[223]

K. *Period of Limitations on Making Adjustments: I.R.C. §6235*

The period of limitations on adjustments is generally 3 years from the later of the date the return was filed or the due date for the return without extensions.[224] If the imputed underpayment is modified by the partnership filing an AAR to revise the return or propose a change in applicable tax rates, the period of limitations extends for 270 days from any modification plus any extension requested and granted.[225] It is also extended for 270 days after the IRS issues a notice of proposed partnership adjustment.[226] The period of limitations may be extended by agreement between the IRS and the partnership.[227] If the partnership files a false or fraudulent partnership return, fails to file a return, or the IRS files a return for the partnership, an adjustment may be made at any time.[228] If there is a substantial understatement of 25 percent or more of gross income, the period of limitations is extended to 6 years.[229] If the IRS mails a notice of final partnership adjustment, the period of limitations is suspended for the period during which a court action may be brought plus 1 year.[230]

L. *Miscellaneous Matters Addressed:I.R.C. § 6241*

Partnership refers to any partnership required to file a tax return.[231] A partnership adjustment is any adjustment in any item or any partner's

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[219] I.R.C. § 6234(b)(1) (2015).
[220] I.R.C. § 6234(b)(2) (2015).
[221] I.R.C. § 6234(c) (2015).
[222] I.R.C. § 6234(d) (2015).
[223] I.R.C. § 6234(e) (2015).
[224] I.R.C. § 6235(a)(1) (2015).
[225] I.R.C. § 6235(a)(2) (2015).
[226] I.R.C. § 6235(a)(3) (2015).
[227] I.R.C. § 6235(b) (2015).
[228] I.R.C. §§ 6235(c)(1), (3)-(4) (2015).
[229] I.R.C. § 6235(c)(3) (2015). The extension is subject to the provisions of I.R.C. § 6501(e)(1)(a) (2015).
[230] I.R.C. § 6235(d) (2015).
[231] I.R.C. § 6241(1) (2015).

distributive share.[232] Return due date is the date prescribed for filing the partnership return for a taxable year determined without regard to extensions.[233] Payments required to be made by a partnership for underpayment of taxes are nondeductible.[234] A partnership having a principal place of business outside the U.S. is treated as located in the District of Columbia.[235]

As discussed above, if a partnership is a debtor placed in bankruptcy the running of a period of limitations for making a partnership adjustment,[236] or assessment[237] is suspended until 60 days after the suspension ends for adjustments or assessments.[238] Collection actions[239] are suspended until 6 months after the suspension ends.[240] The period of limitations extends 60 days beyond of the end of the bankruptcy suspension for purposes of seeking judicial review.[241] During a bankruptcy suspension the IRS may issue a notice of administrative proceeding, notice of partnership adjustment, notice of final partnership adjustment, demand for tax returns, assessment of tax imputed underpayment, or notice and demand for payment of an assessment.[242]

"If a partnership return is filed by an entity for a taxable year but it is determined that the entity is not a partnership (or that there is no entity) 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."[243]

The BBA provides that I.R.C. § 6031(b) requiring preparing a partnership return and providing the information to each partner by March 15 of the tax year has an additional provision that now provides, "Except as provided in the procedures under section 6225(c) [relating to modifying underpayments] with respect to statements under section 6226, or as otherwise provided by the secretary, information required to be furnished by the partnership under this subsection may not be amended after the due date of the return under subsection (a) to which such information relates."[244]

If a partnership ceases to exist, the former partners must take the partnership adjustment into account, the partnership is no longer liable for

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[232] I.R.C. § 6241(2) (2015).
[233] I.R.C. § 6241(3) (2015).
[234] I.R.C. § 6241(4) (2015).
[235] I.R.C. § 6241(5) (2015).
[236] Under I.R.C. § 6235 (2015).
[237] Under I.R.C. § 6501 (2015).
[238] Prop. Treas. Reg. §§ 301.6241-1(a)(3); 301.6241-2(a)(1).
[239] Under I.R.C. § 6502 (2015).
[240] Prop. Treas. Reg. §§ 301.6241-1(a)(3); 301.6241-2(a)(1).
[241] Prop. Treas. Reg. § 301.6241-2(a)(3).
[242] Prop. Treas. Reg. § 301.6241-2(a)(4).
[243] I.R.C. § 6241(8) (2015).
[244] I.R.C. § 6241(e) (2015).

amounts resulting from a partnership adjustment.[245] The former partners are not required to take a partnership adjustment into account if they have elected to elect out of the partnership rules under I.R.C. § 6221(b), because the partnership is under the non-BBA rules.[246] The IRS makes the determination of when a partnership ceases to exist.[247] The determination is made if the partnership terminates[248] or does not have the ability to pay any amount due (that is, the amount is not collectable).[249] Full payment of the obligation occurs when all amounts from the partnership adjustment are paid.[250] If partial payment occurs before the partnership ceases to exist the partners are only required to pay the portion not paid by the partnership.[251] If a partnership partner ceases to exist, the partners of the no longer extant partnership partners are the liable for payment.[252] If there no partners in the adjustment year, the partners during a prior year become liable.[253] The IRS may issue statements to partners or former partners of a partnership that does not issue statements.[254]

No deduction is allowed for any imputed underpayment, penalty payment, or interest required; it is treated instead as an expenditure of the partnership.[255]

III. PROVISIONS THAT SHOULD BE CONSIDERED IN PARTNERSHIP AGREEMENTS TO ADDRESS THE BBA AUDIT PROVISIONS

A. *Partnership Agreement Provisions Related to Opting Out of the BBA Partnership Audit Regulations: I.R.C. § 6221*

The partnership agreement should first address whether it is eligible to elect out of the centralized audit provisions of the BBA regulations.[256] If so, the partnership agreement should provide a mechanism with which to decide whether it chooses to do so or specify that it will do so. If the BBA provisions do not apply, the IRS must audit each partner individually, rather than just auditing the partnership and imposing any resulting imputed

[245] Prop. Treas. Reg. §§ 301.6241-3(a)(1), (2).
[246] Prop. Treas. Reg. § 301.6241-3(a)(3).
[247] Prop. Treas. Reg. § 301.6241-3(b)(1).
[248] Pursuant to I.R.C. § 708(b)(1)(a) (2015).
[249] Prop. Treas. Reg. § 301.6241-3(b)(2).
[250] Prop. Treas. Reg. § 301.6241-3(c)(1).
[251] Prop. Treas. Reg. § 301.6241-3(c)(2).
[252] Prop. Treas. Reg. § 301.6241-3(d)(1).
[253] Prop. Treas. Reg. § 301.6241-3(d)(2).
[254] Prop. Treas. Reg. § 301.6241-3(e).
[255] Prop. Treas. Reg. § 301.6241-4(a).
[256] Pursuant to I.R.C. § 6221 (2015).

underpayment against it.[257] Many partners may be unfamiliar with the BBA audit rules, thus, the agreement should explain that under the BBA rules, the partnership is audited, imputed underpayments are imposed on the partnership, and partners are bound by the result unless the partnership elects out of the BBA procedures. The explanation should be followed by describing the provisions for opting out, including imposition of limits on the number of partners, on who can be a partner, and on transfers of partnership interests that preserve or terminate the partnership's right elect out. Provisions to be considered if opting out is an option follow.

1. Agreement Restrictions on Who Can Be a Partner

If the partnership wants to elect out of the BBA requirements the agreement should include a provision that restricts ownership of partnership interests to only those who would not disqualify the partnership from electing out.[258] The agreement should limit partnership to individuals, C corporations, domestic partnerships and LLCs, S corporations, the estate of a deceased partner, and foreign entities that would be classified as a C corporation if domestic.[259] Trusts, disregarded entities, including single member LLCs,[260] a nominee for another, or an estate of a deceased person other than a deceased partner are ineligible and disqualify the partnership from electing out so the agreement should prohibit such entities from becoming or being partners.[261] Since a foreign entity is an eligible entity only if it would be treated as a C corporation if it were a domestic entity,[262] the agreement should require that a foreign entity may be partner only if it qualifies as an association taxable as a per se corporation,[263] a corporation by default,[264] or a corporation by election and makes the election.[265]

Restrictions on who can be a partner (to prevent partners who would disqualify the partnership) must be accompanied by a provision restricting sale of a partnership interest to prospective partners who would not disqualify the partnership from opting out. Restricting sales of partnership interests to other partners or to the partnership itself, and to prospective partners previously approved by the partnership is an essential provision if the partnership wants to be able to elect out.

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[257] *See* I.R.C. § 6501 (2015).
[258] *See* I.R.C. § 6221(b)(1) (2015).
[259] *Id.*
[260] Described in Treas. Reg. § 301.7701-2(c)(2)(i).
[261] Prop. Treas. Reg. § 301.6221(b)-2(b)(3)(ii).
[262] Prop. Treas. Reg. § 301.6621(b)-2(b)(3)(iii).
[263] Treas. Reg. §§ 301.7701-2(b)(1), (3)-(8).
[264] Treas. Reg. § 301.7701-3(b)(2)(i)(B).
[265] Treas. Reg. § 301.7701-3(c).

2. Restrictions on the Number of Partners

The number of partnership statements must be limited to 100 or fewer to preserve the partnership's right to elect out.[266] Since a sale of an interest to a new partner results in issue of two statements, as does issue of statements to a deceased partner for part of a year and the partner's estate for the remainder, as the number of partners approaches 100, the likelihood of disqualification increases. If an S corporation is a partner, all of its shareholders are counted in determining the number of statements issued. To keep the number of statements issued to 100 or fewer, the partnership must have a mechanism that restricts the number of shareholders an S corporation partner may have.[267] The agreement should also require the S corporation to include the limitation on number of shareholders in its own bi-laws and require the S corporation to provide and evidence of the restriction as a condition of being a partner.[268] Enforcement problems may make such provisions ineffective. The Agreement should explain that the partnership cannot issue more than 100 K-1 statements to be eligible to elect out.[269]

Avoiding disqualification from opting out effectively requires that the number of partners be kept below 100. In addition, the right of a partner to sell an interest in the partnership to other than the partnership or another existing partner must be regulated to assure sale does not cause more than 100 schedules to be issued. This can be accomplished by 1) imposing limits on partnership sales to other than the partnership or another partner, 2) limiting the number of sales to other than the partnership in a tax year, 3) keeping the number of partners sufficiently below 100 to allow for voluntary sales and involuntary increase in number of statements, and 4) placing restrictions on to whom sales may be made to only qualified purchasers and S corporations meeting the number of statements restrictions and the constraints. The partnership agreement should include notification requirements to the IRS and to each partner that reflect the restrictions and complies with IRS notification rules. A partnership that is a partner in another partnership that has not elected out is bound by the partnership level determination of imputed underpayments.[270] A partnership electing out that is a partner in a partnership not electing out should disclose that limitation in its partnership agreement.[271]

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[266] I.R.C. § 6221(b)(1) (2015).
[267] *See* Prop Treas. Reg. § 301.6221-2(b)(2)(iii).
[268] I.R.C. § 6221(b) (2015).
[269] Prop. Treas. Reg. § 301.6221(b)-2(b)(2)(ii).
[270] The amount of the adjustment determined to be underreported is the imputed underpayment, I.R.C. § 6225(a) (2015); I.R.C. § 6242(b) (2015). Prop. Treas. Reg. § 301.6241-1(a)(3).
[271] Prop. Treas. Reg. § 301.6622-1(a)(2).

B. *Partnership Agreement Provisions Describing Binding Results of Partnership Audits on Partners and the Limitations on Partner Participation: I.R.C. § 6222*

The partnership agreement should summarize the BBA statutory requirements; 1) the partnership itself and all partners are responsible for any failure of the partnership to pay any imputed underpayment, 2) only the PR may participate in the audit to determine partnership and partner tax liabilities,[272] 3) the partnership will resolve the amount of any imputed underpayment and resulting additional tax liability and pay it in the year of resolution or push payment out to reviewed year partners for payment in the year the amount is resolved, and 4) every partner must file his or her tax return consistently with the terms of the partnership's return. [273] Including the provisions helps define partner rights and obligations concerning the audit process. Putting them on notice of both limits on participation in audits and limits on taking inconsistent positions minimizes costs associated with partners taking inconsistent positions on their returns.

Partnership liability for actions in tax audits is also minimized by including provisions providing for advance notification of partners by the partnership of positions to be taken before the IRS and opportunity for each partner to address disagreements with the PR before the partnership files its return and before the PR provides responds to an IRS NOPA. The agreement should require each partner to promptly notify the partnership of any error in any proposed partnership return or other communication with the IRS. The partnership may also want to consider a provision imposing on any partner who files inconsistently any additional audit cost to the partnership associated with the partner doing so. Partners should be required to provide notification to the partnership as well as to the IRS if, notwithstanding provisions requiring consistent tax treatment, a partner files a notice of inconsistent treatment of any item.[274]

C. *Agreement Provisions Addressing Selection and Removal of the PR, the PR's Responsibilities to the Partners, and Partner Direction of the PR: IRC § 6223*

A partnership agreement should specify how the PR will be chosen as well as whether the PR will be a partner, an outside tax professional, or an

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[272] I.R.C. §§ 6222(a), (c) (2015).
[273] *See* Prop. Treas. Reg. § 301.6622-1(b)(c) with respect to notices of inconsistent treatment.
[274] *Id.*

EPR in an accounting firm.[275] The agreement should specify what qualifications the PR should possess, for example, have tax preparation and audit experience, be a tax accountant, or a tax attorney. The agreement should identify any additional tax expertise the partnership or PR may employ to provide assistance. The agreement can provide that the PR will be elected by agreement of the partners, chosen by a managing partner, or will be an EPR from an accounting firm selected by the partnership or managing partner.[276] The partnership agreement may impose obligations on the PR, as a condition of taking the position, to review proposed positions on tax returns and in IRS audits with partners or partnership managers before taking them. Since the statute does not permit contract or state law limits on PR actions before the IRS,[277] the agreement should identify terms to be included in the partnership's contract with the PR.

The partnership agreement should identify the grounds for removal and replacement of a PR. If a PR resigns or has to be replaced the agreement should explain how the partnership will select the replacement PR. The obligations of a PR resigning or being replaced should be specified in the partnership agreement and in the contract with the PR. The partnership should identify the procedures the IRS imposes in its forms and regulations for partnership audit, and for replacing the PR so partners understand the rules and restrictions in the IRS regulations.[278]

While the partnership agreement cannot alter or undo whatever agreement the PR reaches with the IRS, the partnership may include in its contract with the PR restrictions on the PR's actions, violations of which are made actionable for breach of contract. The partnership agreement should require that the partnership contract with the PR, make the PR a fiduciary, require the PR not to discriminate among partners to the extent that such non-discrimination is consistent with the PR's overall responsibility to the partnership and is permitted by the IRS. The partnership may also negotiate for indemnification of the partnership against errors caused by the PR's active or passive negligence in dealing with the IRS.

D. *Agreement Provisions Addressing Whether the Partnership or Reviewed Year Partners Pay Imputed Underpayments: I.R.C. §§ 6225 and 6226*

Whether partnership itself or the reviewed year partners be liable for additional taxes identified in an imputed underpayment (whether or not they

[275] I.R.C. § 6223(a) (2015); Prop. Reg. § 301.6223-2(a).
[276] Prop. Treas. Reg. §§ 301.6223-1(c), (1), (d)(1).
[277] *See* Prop. Treas. Reg. § 301.6223-1(a).
[278] *See* Prop. Treas. Reg. § 301.6223-1(b).

liquidated their partnership interest before the adjustment year) or the partnership should be liable for those taxes should be the subject of a provision in the partnership agreement. Pushing out payment of imputed underpayments to reviewed year partners' addresses problems associated with transfers of ownership that occur between filing reviewed year tax returns and IRS audits resulting in additional taxes in the adjustment year. If taxes are not pushed out to reviewed year partners does the selling partner remain liable for additional taxes due and any reallocation of tax liability among partners, or does the purchasing partner assume those liabilities as a condition of purchasing the partnership interest? Whether payment is pushed out to reviewed year partners or not the partnership agreement should address the interaction between 1) individual partner distributive shares,[279] 2) distribution of partnership tax liabilities when distributive shares are reallocated (which must be pushed out to reviewed year partners under IRS rules),[280] and 3) liabilities of adjustment year partners when the partners are different from the reviewed year partners.[281] The partnership agreement should explain what partners are liable for the partnership's payment of imputed underpayments since one of the factors the IRS looks at with respect to liability for imputed underpayments is the partnership agreement.[282] The agreement should explain whether the partnership will impose on reviewed year partners the obligation to pay imputed underpayments even if the partnership must initially pay them, or it may pay the additional taxes itself in the adjustment year and impose the burden on adjustment year partners.[283] Adjustments among partners must always be pushed out to the individual reviewed year partners under the BBA.[284]

If the partnership decides not to push out payments to reviewed year partners, the partnership agreement should require that partners selling their interest enter into an indemnity requirement with the partnership, under which either the buyers agree to be obligated to pay the former partner's share of assessments or the seller agrees to remain liable for imputed underpayments applicable to years when the seller was a partner.[285] Any selling partner's indemnity to a buying partner could be guaranteed by a bond that survives sale of a partnership interest. Alternatively, the partnership agreement could specifically require those purchasing a

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[279] Prop. Treas. Reg. §§ 301.6225-2(b)(3)(i-iv).
[280] I.R.C. § 6227(b)(2) (2015); *see also* Prop. Treas. Reg. §§ 301.6227-3; 301.6241-1(a)(9).
[281] *Id. See also* Prop. Treas. Reg. §§ 301.6225-3(a), (b)(1).
[282] *See* Prop. Treas. Reg. § 301.6225-2(c)(2)(ii).
[283] *See* I.R.C. § 6226(a)(1) (2015).
[284] I.R.C. § 6227(b)(2) (2015).
[285] I.R.C. §§ 6226(a)(2), (b)(1) (2015).

partnership interest to assume liability for their share of imputed underpayments and AARs the partnership pays[286]

The partnership agreement should describe the procedures, reference the code provisions related to those procedures, and specify that partners agree to be bound by the terms of the procedures. Specific contracts with each partner specifying the obligations should be considered, even if the partnership agreement is structured to elect out of the BBA regulations[287] and a description of the default rules applicable if the partnership finds it cannot elect out should be included so all partners are placed on notice of potential continuing liabilities.

A partnership provision providing that imputed underpayments and AAR payments will be pushed out to reviewed year partners simplifies the process considerably, even though the partnership remains secondarily liable.[288] The partnership agreement should also address the increase in the interest rate imposed when payment is pushed out to reviewed year partners to avoid misunderstandings as to the additional cost associated with pushing out payment.[289]

E. *Partnership Agreements Should Address How Stand Alone Administrative Adjustments and Administrative Adjustments in Response to a NOPA Are Handled: I.R.C. § 6227*

Under the BBA Rules only the partnership through its PR may amend a partnership tax return.[290] Since partners must normally file personal returns consistently with the contents of the partnership return, errors must generally be corrected by the partnership.[291] The partnership agreement should address partners' rights to demand the partnership and its PR file an AAR to correct errors both affecting the partnership return and reflecting an individual partner's return. The AAR for such changes must occur before the IRS issues a NOPA (or as an adjustment pursuant to a NOPA).[292]

Because the IRS applies the highest tax rates to underpayments identified in a NOPA and shifts the burden to the partnership to identify whatever lower rates are applicable to specific partners, a provision is needed in the partnership agreement that explains how to identify and document the tax rates applicable to each partner so the partnership can file an AAR to

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[286] I.R.C. §§ 6226(b)(2), (3) (2015).
[287] Under either I.R.C. § 6221 or § 6225 (2015).
[288] Under I.R.C. § 6226 (2015).
[289] I.R.C. § 6226(c)(2) (2015).
[290] Prop. Treas. Reg. § 301.6227-3(a).
[291] I.R.C. § 6222(a) (2015).
[292] *Id.*

secure the reduced rates.[293] The partnership provision must explain how to secure from the partners the necessary information on tax rates and necessary documentation applicable to each partner's specific tax situation to minimize partnership (and partner) tax liability.[294] It is unclear whether or how a partner or the partnership can file an AAR to reflect the actual tax rate applicable to the partner, as opposed to identifying the highest tax rate, personal, corporate, or capital that is applicable. The partnership agreement should provide a process the partnership must go through and the data required of each individual partner. Even if the partnership pushes out tax liability to individual reviewed year partners the partnership must go through the process to complete the audit and to secure the amounts of additional tax and tax rates the individual partners must pay.[295] With respect to locating partners and former partners the partnership agreement should require partners to keep the partnership informed of how they can be contacted after liquidating a partnership interest to meet the "reasonable effort to locate" requirement of the regulations.[296]

F. *Refunds to Partners*

It is clear that '§ 301.6227-3(b)(2) allows the reviewed year partner to claim a refund where the partnership incorrectly allocated items from the partnership in the reviewed year and provides that when a partner (other than a pass-through partner) takes into account adjustments requested in an AAR, and those adjustments result in a decrease in tax, the partner may use that decrease to reduce the partner's chapter 1 tax for the taxable year which includes the date the statement was furnished to the partner (reporting year), and may make a claim for refund of any overpayment that results.'[297] What is not completely clear is whether a taxpayer or a PR can request a refund through an AAR or otherwise for any other reduction in taxes identified in the audit process that more than offsets any increase found in an imputed underpayment.

The right of a partner (as opposed to the PR), to file an amended return presumably follows approval of a modification requested by the PR and approved by the IRS. "A reviewed year partner … must file all amended returns required for modification under paragraph (d)(2) of this section with the IRS. … [T]he partnership representative provides to the IRS in the form

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[293] For initial tax rate determination see I.R.C. § 6225(b)(1) (2015); I.R.C. § 6225(d)(1) (2015).
[294] Pursuant to I.R.C. § 6226 (2015).
[295] I.R.C. §§ 6221, 6227 (2015); Prop. Treas. Reg. § 301.6227-1-3.
[296] Prop. Treas. Reg. § 301.6226-1-3.
[297] Centralized Partnership Audit Regime (REG-136118-15); 82 FR 27334, 27369 (2017).

and manner prescribed by the IRS an affidavit from the partner … that each amended return required to be filed under paragraph (d)(2) of this section has been filed (including the date on which such amended returns were filed) and that the full amount of tax, penalties, additions to tax, additional amounts, and interest was paid (including the date on which such amounts were paid)."[298]

"An amended return filed under … this section claiming a refund may be filed after the expiration of period of limitations under section 6511, provided all partnership adjustments allocated to the partner (or indirect partner) filing the amended return are taken into account on such amended return, the only items reported on the amended return are items attributable to such partnership adjustments, and the partner files all required amended returns described in paragraph (d)(2)(iv) of this section."[299] This implies that a partner may file for a refund if he or she is entitled to one to correct for the inability of the partnership to include negative adjustments.

If the partnership elects to have reviewed year partners pay the imputed underpayment,[300] each reviewed year partner must take into account its share of adjustments requested in an AAR if the partnership makes an election under Prop. Treas. Reg. § 301.6227-2(c) to have its reviewed year partners take such adjustments into account with respect to such AAR.[301] "Each reviewed year partner receiving a statement … must take into account adjustments reflected in the statement in the taxable year that includes the date the statement is furnished (reporting year) in accordance with paragraph (b) of this section."[302]

For example, suppose that in 2022, partner A, an individual, received a statement from partnership for partnership's 2020 taxable year. The only adjustment shown on the statement is an increase in ordinary losses. Taking into account the adjustment, A determines that for 2022 (the reporting year) he has a reduction of $100. A's chapter 1 tax for 2022 (without regard to any additional reporting year tax) is $150. A's chapter 1 tax for 2022 is reduced to $50 ($150 chapter 1 tax without regard to the additional reporting year tax plus <$100> additional reporting year tax)."[303]

If, instead, A's chapter 1 tax for 2022 is $75, A's chapter 1 tax for 2022 is reduced by the <$100> of additional reporting year tax, A's chapter 1 tax for 2022 is $0 ($75 chapter 1 tax without regard to any additional reporting year tax plus <$100> of additional reporting year tax), A owes no chapter 1

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[298] Prop. Treas. Reg. § 301.6225-2(d)(2)(iii).
[299] Prop. Treas. Reg. § 301.6225-2(d)(2)(v)(B).
[300] Prop. Treas. Reg. § 301.6227-3.
[301] Prop. Treas. Reg. § 301.6227-3(a).
[302] *Id*.
[303] Prop. Treas. Reg. § 301.6227-3(b)(3), Ex. 1.

tax for 2022, and A may make a claim for refund with respect to the overpayment of $25.[304] In neither case the examples arguabley suggest what tax rate is applied, the maximum in the category being taxed or the taxpayer's actual marginal rate for the year.

If the principle that the taxpayer should be placed in the position the taxpayer would have been in if the partnership and the partners filed correctly initially, each partner should be able to file for any refunds due after computing the partner's tax in accordance with the corrections identified by the IRS and the taxpayer's particular tax position. Whether this is what the IRS regulations permit remains to be clarified.[305]

IV. CONCLUSION

The BBA and the new regulations describe a new IRS audit structure applicable to partnerships. The partnership, rather than individual partners become the focus of the audit and of payment for any imputed under payments unless the partnership elects out. Payment is made by the partnership unless the partnership pushes out payment in the year the review becomes final to the individual reviewed year partners. The process under which all of this occurs is spelled out in the regulations; however, a number of issues remain to be resolved. Many issues will require further clarification. One hopes the IRS will be tolerant of taxpayers' good faith misunderstanding of the intent of the regulations and quick to provide clarification.

[304] Prop. Treas. Reg. § 301.6227-3(b)(3), Ex. 2.
[305] *See* New York State Bar Association Tax Section, *Report on the Partnership Audit Rules of the Bipartisan Budget Act of 2015*, May 25, 2016.

APPENDIX
GLOSSARY OF TERMS

1. Adjustment year: The taxable year in which an adjustment becomes final, either because of a court decision, an administrative adjustment request, or an un-appealed notice of final partnership adjustment.[306]
2. Adjustment year partner: Any person who held an interest in a partnership at any time during the adjustment year.[307]
3. Administrative Adjustment Request (AAR): A request filed by the PR to correct errors on a partnership return for a prior year in the amount of one or more items of income, gain, loss, deduction, credit, or distributive share of the partnership for any partnership taxable year and taken into account in the partnership taxable year in which the AAR is made.[308]
4. Entity Partnership Representative (EPR): An individual through whom the entity partnership representative acts as the designated individual.[309]
5. Imputed underpayment: The amount determined to be underreported in accordance with the regulatory provisions of Prop. Treas. Reg. § 301.6225-1.[310]
6. Indirect partner: Any person who has an interest in a partnership through their interest in one or more pass-through partners.[311]
7. Partnership Representative (PR): A partner or other person with a substantial presence in the U.S who shall have sole authority to act on behalf of the partnership in an IRS tax audit.[312]
8. Partnership adjustment: Any adjustment to any item of income, gain, loss, deduction, or credit of a partnership, or any partner's distributive share thereof.[313]
9. Partnership partner: A partnership that holds an interest in another partnership.[314]

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[306] Prop. Treas. Reg. § 301.6241-1(a)(1).
[307] Prop. Treas. Reg. § 301.6241-1(a)(2).
[308] Prop. Treas. Reg. § 301.6227-1.
[309] Prop. Treas. Reg. §§ 301.6223-1(b), (3)(i).
[310] Prop. Treas. Reg. § 301.6241-1(a)(3).
[311] Prop. Treas. Reg. § 301.6241-1(a)(4).
[312] I.R.C. §§ 6223(a), (b) (2015).
[313] Prop. Treas. Reg. § 301.6241-1(a)(6).
[314] Prop. Treas. Reg. § 301.6241-1(a)(7).

10. Pass-through partner: A pass-through entity that holds an interest in a partnership, including a partnership, a foreign entity classified as a partnership, an S corporation, a trust other than a disregarded entity or one wholly owned by one person, or an estate.[315]

11. Reviewed year: The partnership taxable year to which a partnership adjustment relates.[316]

12. Reviewed year partner: Any person who held an interest in a partnership at any time during the reviewed year.[317]

13. Tax attribute: Anything that can affect, the amount or timing of an item of income, gain, loss, deduction, or credit of a partnership or a partner, such as basis, holding period, character of income, gain, loss, deduction, credit, carryovers or carrybacks.[318]

[315] Prop. Treas. Reg. § 301.6241-1(a)(5).
[316] Prop. Treas. Reg. § 301.6241-1(a)(8).
[317] Prop. Treas. Reg. § 301.6241-1(a)(9).
[318] Prop. Treas. Reg. § 301.6241-1(a)(10).